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Tr.C.M.P(MD)No.319 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 18.10.2024

Pronounced on : 29.11.2024

CORAM

THE HONOURABLE MR.JUSTICE P.VADAMALAI

Tr.C.M.P(MD)No.319 of 2024

and

C.M.P(MD)No.7161 of 2024

D.Iswariya

... Petitioner

Vs.

V.Venkatramana

... Respondent

PRAYER : Transfer Civil Miscellaneous Petition is filed under Section 24 of the Code of Civil Procedure, to withdraw the case in F.C.O.P.No. 229 of 2024 on the file of the District Judge of Family Court, Erode and transfer the same to the Family Court, Trichy.

For Petitioner : Mr.T.J.Ebenezer Charles

For Respondent : Ms.A.Devaki

ORDER

This Transfer Civil Miscellaneous Petition is filed seeking for an order to withdraw the F.C.O.P.No.229 of 2024 on the file of Family Court, Erode and to transfer the same to the file of the Family Court,Trichy.



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2. The petitioner herein is the wife of the respondent. The marriage between the petitioner and respondent was solemnized on 24.03.2019 according to Hindu customs. Out of wedlock, the petitioner gave birth a male child on 22.05.2021. It is alleged that as the respondent started harassment on the petitioner and demanded more dowry at the instigation of his family members. Hence, misunderstandings arose between them and the petitioner was driven out from the matrimonial home. She is now residing with her parents. Thereafter, the respondent filed the petition in F.C.O.P.No.229 of 2024 before the Family Court, Erode, seeking divorce against the petitioner.

3. The learned counsel for the petitioner has submitted that the petitioner along with her male child was forced to leave the matrimonial home. She is now residing with her aged parents at Trichy along with her 2 ½ years old child. She is depending on the income of her parents. She has no means to travel 400 km to conduct the case at Erode. Moreover, the respondent has not been paying any maintenance for the petitioner and child. In the above circumstances, the petitioner has filed this present Transfer Civil Miscellaneous Petition.



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4. The learned counsel for the respondent objected the petition.

The learned counsel further submitted that there is no proof for the alleged harassment and dowry demand and except for Trichy, the case may be transferred to any other station situated between Erode and Trichy.

5. Submissions of both side considered. The respondent and the petitioner are husband and wife. Due to misunderstandings, they are living separately and in such circumstances, the respondent filed the petition for divorce before the Family Court, Erode. The petitioner is living with her child at Trichy and depending on her parents.

6. The proposition of law regarding transfer petitions, more specifically in the matters of matrimonial cases, is well settled by this Court and also by the Hon'ble Supreme Court in the following cases:-

(i) The Hon'ble Division Bench of the High Court of Madras in W.A.No.1181 of 2009, dated 09.07.2010, wherein in paragraph Nos.21 and 22, it has been observed as under:-

"21. The domicile or citizenship of the opposite party is immaterial in a case like this. In



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case the marriage was solemnized under Hindu Law marital relationship is governed by the provisions of the Hindu Marriage Act. Therefore, Section 19 has to be given a purposeful interpretation. It is the residence of the wife, which determines the question of jurisdiction, in case the proceeding was initiated at the instance of the wife.

22. While considering a provision like Section 19 (iii-a) of the Hindu Marriage Act, the objects and reasons which prompted the parliament to incorporate such a provision has also to be taken note of. Sub Clause (iii-a) was inserted in Section 19 with a specific purpose. Experience is the best teacher. The Government found the difficulties faced by women in the matter of initiation of matrimonial proceedings. The report submitted by the Law Commission as well as National Commission for Women, underlying the need for such amendment so as to enable the women to approach the nearest jurisdictional court to redress their matrimonial grievances, were also taken note of by the Government. Therefore such a beneficial provision meant for the women of our Country should be given a meaningful interpretation by Courts."



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WEB COPY (ii) In yet another case in Tr.C.M.P(MD)Nos.138 and 139 of 2006, dated 30.08.2006, this Court has considered the following judgments of Hon'ble Supreme Court of India:-

*"(1). In the case of **Mona Aresh Goel vs. Aresh Satya Goel [(2000) 9 SCC 255]**, when the wife pleaded that she was unable to bear the traveling expenses and even to travel alone and stay at Bombay, the Supreme Court ordered transfer of proceedings.*

*(2) In the case of **Geeta Heera vs. Harish Chander Heera [(2000) 10 SCC 304]**, the Hon'ble Supreme Court has held that where the petitioner's wife has pleaded lack of money, the same has to be considered.*

(3) In the case of Lalita A.Ranga vs. Ajay Champalal Ranga [(2000) 9 SCC 355], the wife has filed a petition to transfer the proceedings initiated by the husband for divorce, at Bombay. The place of residence of the wife was at Jaipur, Rajasthan. In that case, the petitioner is having a small child and that she pleaded difficulty in going all the way from Jaipur to Bombay to contest the proceedings from time to time. Considering the distance and the difficulties faced



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by the wife, the Supreme Court has allowed the transfer petition."

7. Even in recent years, the Hon'ble Supreme Court has reiterated the difficulties faced by the wife while attending the divorce petition filed by the husband and transfer the divorce petition where the wife ordinarily resides. The Hon'ble Supreme Court has observed and held in paragraph Nos.9 to 12 in its order, dated 08.07.2022 passed in **CIVIL APPEAL NO(S). 4894 of 2022 (Arising out of S.L.P.(C)No(s).16465 of 2021)**, which is filed against the rejection of Tr.C.M.P(MD)No.473 of 2020 of this Court as follows:

"9. The cardinal principle for exercise of power under Section 24 of the Code of Civil Procedure is that the ends of justice should demand the transfer of the suit, appeal or other proceeding. In matrimonial matters, wherever Courts are called upon to consider the plea of transfer, the Courts have to take into consideration the economic soundness of both the parties, the social strata of the spouses and their behavioural pattern, their standard of life prior to the marriage and subsequent thereto and the circumstances of both the parties in eking out their livelihood and under whose protective



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umbrella they are seeking their sustenance to life. Given the prevailing socioeconomic paradigm in the Indian society, generally, it is the wife's convenience which must be looked at while considering transfer.

10. Further, when two or more proceedings are pending in different Courts between the same parties which raise common question of fact and law, and when the decisions in the cases are interdependent, it is desirable that they should be tried together by the same Judge so as to avoid multiplicity in trial of the same issues and conflict of decisions.

11. As noticed above, the appellant is a young lady aged about 21 years, staying alone along with her aged parents. Under the above circumstances, it is difficult for her to travel all the way from Chennai to Vellore to attend the court proceedings of the case filed by the respondent seeking annulment of marriage. Further, it is also just and proper to club all the three cases together to avoid multiplicity of the proceedings and conflict of decisions. Therefore, the High Court was not justified in rejecting transfer petition bearing TR.C.M.P.No.473 of 2020, filed by the appellant herein.



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12. Resultantly, the appeal succeeds and is accordingly allowed. The Order dated 19.11.2020 passed by the High Court in TR.C.M.P. NO.473 of 2020 is set aside. We direct transfer of F.C.O.P. No.125 of 2020 pending consideration before the Family Court, Vellore to the jurisdictional Family Court at Chennai."

8. It is well settled proposition of law that whenever the transfer petition is filed in the matrimonial disputes, the convenience of the wife should be predominantly looked into and the wife's convenience shall be given preference. Moreover, the respondent has no objection to transfer the case at middle station, which is of no use as both parties have to travel. Therefore, taking note of the settled position of the convenience of the wife in the matrimonial cases, this Court is of the view that the present petition filed by the wife is to be allowed.

9. In the result, this Transfer Civil Miscellaneous Petition is allowed. The petition in F.C.O.P.No.229 of 2024 on the file of the Family Court, Erode, is hereby withdrawn and transferred to the file of the Family Court, Trichy for disposal in accordance with law. The learned Judge, Family Court, Erode is directed to transmit the entire



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records pertaining to the case in F.C.O.P.No.229 of 2024 to the transferee Court, within a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

29.11.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
VSD

To

- 1.The Family Court, Erode.
- 2.The Family Court, Trichy.
- 3.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

VSD

Pre - Delivery Order made in
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and
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