



Tr.C.M.P(MD)No.411 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 20.08.2024

Pronounced on : 11.11.2024

CORAM

THE HONOURABLE MR.JUSTICE P.VADAMALAI

Tr.C.M.P(MD)No.411 of 2024

and

C.M.P(MD)No.8928 of 2024

S.Seenisudha

... Petitioner

Vs.

M.Rajesh

... Respondent

PRAYER : Transfer Civil Miscellaneous Petition is filed under Section 24 of the Code of Civil Procedure, to withdraw the original petition in H.M.O.P.No.519 of 2023 on the file of the Subordinate Judge, Poonamallee and transfer the same to the competent Court in Tuticorin District.

For Petitioner : Mr.K.Muthu Ganesa Pandian

For Respondent : Mr.R.Surya Prakash

ORDER

This Transfer Civil Miscellaneous Petition is filed seeking for an order to withdraw H.M.O.P.No.519 of 2023 on the file of the learned Subordinate Judge, Poonamalle and transfer the same to Tuticorin District.



Tr.C.M.P(MD)No.411 of 2024

WEB COPY

2. The petitioner is the wife of the respondent. The marriage between the petitioner and the respondent was solemnized on 18.11.2015 as per Hindu rites and customs. Out of wedlock, they were blessed with a male child named Lakshith Murugesan born on 12.11.2016. Because of matrimonial problems and misunderstanding, they are living separately. Then, the respondent filed H.M.O.P.No.519 of 2023 before the Sub Court, Poonamallee, for dissolution of their marriage.

3. The learned counsel for the petitioner has submitted that the petitioner with her child are now residing at Kovilpatti Taluk along with the parents. The petitioner is jobless. She has to travel 1200 kms for every hearing from Tuticorin to Chennai by incurring Rs.8,000/-, so she finds it very difficult to maintain herself and her son. The petitioner is solely depending on her father, who is a heart patient and also who is suffering from coronary artery disease. The petitioner produced a copy of medical records. The learned counsel further submitted that as per provision of Section 19(ii) of the Hindu Marriage Act, 1955, the petition for divorce shall be presented at the jurisdiction of the respondent/wife where she ordinarily resides. Therefore, the petitioner has filed this



Tr.C.M.P(MD)No.411 of 2024

present petition seeking transfer of divorce petition. In support of his submissions, the learned counsel has relied on the following citations:

***"(1) (2020) 10 Supreme Court Cases 725
(Shruti Kaushal Bisht /v/ Kaushal R.Bisht)
(2) Order of the High Court, Madras
passed in Tr.C.M.P.No.9 of 2018, dated
14.08.2018
(3) 2022 SCC Online SC 1199
(N.C.V.Aishwarya /v/ A.S.Saravana Karthik
Sha)"***

4. Per contra, the learned counsel for the respondent filed a counter and objected the petition. He would further submit that the respondent was diagnosed with autoimmune hepatitis and liver cirrhosis with portal hypertension. The doctors said that the respondent's own immune system aggressively attacked the functional liver, and even if he undergoes liver surgery his condition would not improve. The respondent is unable to travel long distances because of his present health condition. The respondent is ready to pay the travel expenses of the wife. The petitioner has not shown sufficient justifiable reason for transfer of the case. In support of his argument, the learned counsel for the respondent relied on the following citations:



WEB COPY



Tr.C.M.P(MD)No.411 of 2024

***"(1) (2004) 13 Supreme Court Cases 497
(Meenakshi /v/ Mukesh Kumar)
(2) (2006) 9 Supreme Court Cases 197
(Anindita Das /v/ Srijit Das)"***

5. Submissions of both sides and citations considered. The respondent and the petitioner are husband and wife. Due to misunderstanding, they are living separately and in such circumstances, the respondent has filed H.M.O.P.No.519 of 2023 before the Subordinate Court, Poonamallee, seeking for dissolution of marriage. The petitioner has filed the maintenance case in M.C.No.3 of 2024 before the competent Court at Kovilpatti and the same is pending for filing counter. As per the number of the decisions of the Hon'ble Supreme Court, it is well settled proposition of law, whenever the transfer petition is filed in matrimonial disputes, the convenience of the wife should be predominantly looked into and the wife's convenience shall be given preference. Moreover, the transfer is sought from the Sub Court to the Sub Court and hence, the appearance of the respondent in each and every hearing need not necessary as like Family Court. Both sides' citations are considered. There is no material placed to show that the petitioner has a residence or protective place for stay at Poonamalle, even though the



Tr.C.M.P(MD)No.411 of 2024

respondent is ready to pay travel expenses as the case relied on by him.

Indian Society, generally, it is the wife's convenience which must be looked at while considering transfer as laid down in **2022 SCC Online SC 1199**. Therefore, taking note of the settled position of the convenience of the wife in matrimonial cases, I am of the view that the present petition filed by the wife is to be allowed.

6. In the result, this Transfer Civil Miscellaneous Petition is allowed. The petition in H.M.O.P.No.519 of 2023 pending on the file of the Subordinate Court, Poonamallee, is hereby withdrawn and transferred to the file of the Sub Court, Kovilpatti, for disposal in accordance with law. The learned Subordinate Judge, Poonamalle, is directed to transmit the entire records pertaining to the case in H.M.O.P.No.519 of 2023 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.

11.11.2024

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



WEB COPY



Tr.C.M.P(MD)No.411 of 2024

To

- 1.The Subordinate Judge,
Poonamallee.
- 2.The Sub Judge,
Kovilpatti.
- 3.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Tr.C.M.P(MD)No.411 of 2024

P.VADAMALAI, J.

VSD

Pre - Delivery Order made in
Tr.C.M.P(MD)No.411 of 2024
and
C.M.P(MD)No.8928 of 2024

11.11.2024