



Tr.C.M.P(MD)No.422 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 08.08.2024

Pronounced on : 18.10.2024

CORAM

THE HONOURABLE MR.JUSTICE P.VADAMALAI

Tr.C.M.P(MD)No.422 of 2024

and

C.M.P(MD)No.9231 of 2024

S.Kasturi

... Petitioner

Vs.

A.Ramachandran

... Respondent

PRAYER : Transfer Civil Miscellaneous Petition is filed under Section 24 of the Code of Civil Procedure, to withdraw the H.M.O.P.No.251 of 2024 pending on the file of the Family Court, Puducherry and to transfer the same to the file of the Subordinate Court, Thuraiyur for disposal on merits along with H.M.O.P.No.31 of 2024.

For Petitioner : Mr.M.Anaimuthuraja

For Respondent : Mr.G.Rajan



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ORDER

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This petition is filed by the petitioner seeking to withdraw H.M.O.P.No.251 of 2024 pending on the file of the Family Court, Puducherry and to transfer the same to the file of the Subordinate Court, Thuraiyur for disposal along with H.M.O.P.No.31 of 2024.

2.Case of the petitioner/wife in brief:-

The petitioner is the wife of the respondent and their marriage was solemnized on 07.09.2022, as per Hindu Rites and Customs at Puducherry. Out of wedlock, a male child A.Arunagirinathan was born to them on 16.06.2023. At the time of marriage, the respondent, being MCA graduate was working at HP Company in Chennai. The respondent did not take any care of the petitioner and the child. He left them in the petitioner's parental home and neglected them in all means. All efforts taken by the petitioner went in vain. The respondent filed H.M.O.P.No.251 of 2024 on the file of the Family Court, Puducherry against the petitioner seeking divorce. The petitioner filed H.M.O.P.No.31 of 2024 on the file of the Subordinate Court, Thuraiyur for restitution of conjugal rights against the respondent and also filed M.C.No.15 of 2024 on the file of the Judicial Magistrate Court,



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Thuraiyur, seeking maintenance from the respondent. The petitioner is now residing along with her parents at Thuraiyur, Thirucirappalli District. Hence, the petitioner filed this present petition seeking transfer.

3.Case of the respondent/husband in brief:-

The respondent objected the petition and contended that the petitioner often left to her parent's house and was continuously staying at Thuraiyur. She finally left the matrimonial home on 14.10.2022 and she did not return back. The petitioner already married one Vigneshwaran of Pudukottai and gave several tortures to him and then got a mutual divorce in H.M.O.P.No.55 of 2020 on 02.12.2021. Thereafter, the petitioner married the respondent and started giving torture and so many displeasures which caused the respondent to file H.M.O.P.No.251 of 2024 before the Family Court, Puducherry for divorce. The respondent was suffering from heart disease and a stent was placed in a part of his heart. Moreover, the respondent's mother is suffering from breast cancer and he is taking care of his mother. The petitioner is a brave lady and qualified with M.Sc., M.Phil., and B.Ed., and she can attend the Court without any difficulty. If the transfer is granted, the respondent will suffer irreparable loss and hardship.



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4. The learned counsel for the petitioner submitted that the petitioner is a female, who is looking after her one year old child. The petitioner is now jobless and she is also depending on her parents at Thuraiyur. She finds it difficult to travel to Puducherry. The respondent has also to attend the Courts at Thuraiyur, where the petitioner has filed H.M.O.P.No.31 of 2024 for restitution of conjugal rights and M.C.No.15 of 2024 for maintenance. Therefore, the respondent will not be prejudiced if the H.M.O.P.No.251 of 2024 is transferred from the Family Court, Puducherry to the Subordinate Court, Thuraiyur.

5. Per contra, the learned counsel for the respondent contended that at the instance of her parents, the petitioner deserted the respondent and she is giving harassment to the respondent by filing cases. In addition to filing of H.M.O.P.No.31 of 2024 and M.C.No.15 of 2024, the petitioner lodged a dowry complaint against the respondent and his family members. The respondent being a heart patient with a stent fixed, his travel to long distance is risky. Moreover, the mother of the respondent is a cancer patient and he has to look after his mother. The petitioner's father is a money lender and is having sufficient means to maintain the petitioner. In a similar case, this



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Court previously dismissed the transfer petition and produced the copy of the order passed by this Court in Tr.C.M.P(MD)No.39 of 2022, dated 22.03.2022. Moreover, the respondent is willing to pay the cost to the petitioner for travel and hence, the petition may be dismissed.

6. The learned counsel for the petitioner in reply submitted that the petitioner is maintaining one year old child and the petitioner and the child are under the care and custody of the petitioner's parents. The respondent admitted that the petitioner is now residing at Thuraiyur in her parental house. Hence, travel to Puducherry from Thuraiyur is not possible and this petition may be allowed.

7. On hearing both sides and on perusal of records, it is clear that the marriage between the petitioner and the respondent was solemnized on 07.09.2022 at Puducherry and out of wedlock they have a male child, R.Arunagirinathan and that now both are residing separately. The respondent has filed H.M.O.P.No.251 of 2024 before the Family Court, Puducherry for divorce. The petitioner has filed H.M.O.P.No.31 of 2024 for restitution of conjugal rights and also filed M.C.No.15 of 2024 for maintenance and the



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said cases are pending before the concerned Courts at Thuraiyur. That being the position, both parties are bound to appear before the Courts at Puducherry and Thuraiyur. Now, the petitioner/wife has filed this present petition for transfer of H.M.O.P.No.251 of 2024 from the Family Court, Puducherry to Thuraiyur Subordinate Court.

8. 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 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.



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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."*

(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*



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

9. 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**



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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 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



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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.

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.

10. In the case on hand, both parties are residing at different places. The petitioner/wife is residing at Thuraiyur along with her parents with her one year old child. The respondent/husband is residing in Puducherry. Both parties have filed the petitions separately for divorce, restitution of conjugal



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rights and maintenance. As already stated supra, both parties are bound to attend the respective Courts. As discussed supra, the settled position and amendment to the provision of the Hindu Marriage Act and the report submitted by the Law Commission as well as the 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. Therefore, such a beneficial provision meant for the women of our Country should be given a meaningful interpretation by the Courts. While considering the previous order of this Court relied on by the respondent, wherein the wife frequently visited the hometown of her husband for filing complaints and on that ground the transfer sought by the wife was negatived. But the facts and circumstances of this case are different. So, the order produced by the respondent/husband is not applicable to this case. Therefore, this Court is inclined to allow this petition.

11. In the result, this Transfer Civil Miscellaneous Petition is allowed. The petition in H.M.O.P.No.251 of 2024 pending on the file of the Family Court, Puducherry stands transferred to the file of the Subordinate Court, Thuraiyur to try along with H.M.O.P.No.31 of 2024. The learned Sub Judge,



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Thuraiyur is directed to dispose of both the petitions within a period of five months from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petition is closed.

18.10.2024

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

To

1.The Family Court,
Puducherry.

2.The Subordinate Court,
Thuraiyur.



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P.VADAMALAI, J.

VSD

Pre - Delivery Order made in
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and
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