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Tr.C.M.P(MD)No.447 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 06.09.2024

Pronounced on : 16.10.2024

CORAM

THE HONOURABLE MR.JUSTICE P.VADAMALAI

Tr.C.M.P(MD)No.447 of 2024

and

C.M.P(MD)No.10036 of 2024

S.Muthukamatchi

... Petitioner

Vs.

G.Dhakshinamoorthy

... Respondent

PRAYER : Transfer Civil Miscellaneous Petition is filed under Section 24 of the Code of Civil Procedure, to withdraw H.M.O.P.No.252 of 2022 from the file of the Principal Subordinate Court, Dindigul and transfer the same to Family Court, Madurai.

For Petitioner : Mr.S.Madhavan
For Respondent : Mr.T.Balakrishnan

ORDER

This Transfer Civil Miscellaneous Petition is filed seeking for an order to withdraw H.M.O.P.No.252 of 2022 on the file of Principal Subordinate Court, Dindigul and to transfer the same to the file of the Family Court, Madurai.



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2. The petitioner herein is the wife and the respondent is the husband. The marriage between the petitioner and respondent was solemnized on 12.12.2018 as per Hindu rites and customs. Out of wedlock, they have a female child born on 09.10.2019. It is alleged that because of misunderstanding and cruelty made by the respondent and his parents, the petitioner was driven out by them from the matrimonial home along with her child. The petitioner and her child are now residing with her parents. Thereafter, the respondent filed a petition in H.M.O.P.No.252 of 2022 before the Principal Sub Court, Dindigul for restitution of conjugal rights.

3. The learned counsel for the petitioner has submitted that the petitioner is now residing in her parents' home at Madurai along with her female child. As the petitioner has found it very difficult to attend the Court at Dindigul from Madurai, she filed Tr.C.M.P(MD)No.353 of 2023 before this Court and the same was dismissed with an observation that there is no purpose to transfer the case. The learned counsel would further submit that in the earlier petition, the parties were referred to mediation and the mediation was failed and hence, this Court dismissed the earlier petition without considering the convenience of the wife in the



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matrimonial cases. There is no statutory bar for filing of the 2nd transfer petition as the earlier petition was not disposed of on merits. The petitioner is not having any independent income and she is only depending on her parents even for her day-to-day expenses. Hence, she has filed a case in D.V.C.No.45 of 2024 before the Additional Mahila Court, Madurai, seeking maintenance and other reliefs and the same is also pending. In the above circumstance, the petitioner has filed this present Transfer Civil Miscellaneous Petition. In support of his submissions, the learned counsel for the petitioner relied on the following citations:

**"(1) (2000) 10 Supreme Court Cases 304
(Geeta Heera /v/ Harish Chander Heera)
(2) (2000) 9 Supreme Court Cases 255
(Mona Aresh Goel /v/ Aresh Satya Goel)
(3) (2000) 9 Supreme Court Cases 355
(Lalita A.Ranga /v/ Ajay Champalal Ranga)
(4) (2005) 12 Supreme Court Cases 395
(Archana Singh /v/ Surendra Bahadur Singh)
(5) 2023 (2) CTC 41 of Madras High
Court (P.Geetha /v/ V.Kirubaharan)"**

4. The learned counsel for the respondent has filed a counter and vehemently objected the petition. He further submitted that the petitioner



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insisted for separate living from the matrimonial home, and for that also the respondent gave consent, but the petitioner and her parents compelled the respondent to settle at Madurai. The petitioner herself left the matrimonial home. The respondent filed the petition for restitution of conjugal rights. Eventhough this Court has referred the matter to mediation, the petitioner refused to live with the respondent and therefore, this Court dismissed the earlier transfer petition as there would be no purpose. The petitioner filed this petition 2nd time, which is barred by law.

5. Submissions of both sides considered. The respondent and the petitioner are husband and wife. Due to misunderstanding, they are living separately and in such circumstances, the respondent filed the petition for restitution of conjugal rights before the Principal Sub Court, Dindigul. In view of the citations relied on by the petitioner's side and also in a catena of 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 petitioner now filed a case in D.V.C.No.45 of



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2024 before the Additional Mahila Court, Madurai, seeking maintenance and other reliefs, the pendency of the DV case was not disputed. If so, the respondent is bound to appear before that case in Madurai. Therefore, considering the abovesaid change in circumstances and 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.252 of 2024 on the file of the Principal Subordinate Court, Dindigul, is hereby withdrawn and transferred to the file of the Family Court, Madurai for disposal in accordance with law. The learned Principal Sub Judge, Dindigul, is directed to transmit the entire records pertaining to the case in H.M.O.P.No.252 of 2022 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.

16.10.2024

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



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To

- 1.The Principal Subordinate Court,
Dindigul.
- 2.The Family Court,
Madurai.
- 2.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
Tr.C.M.P(MD)No.447 of 2024
and
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