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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 16.10.2024

Pronounced on : 27.11.2024

CORAM

THE HONOURABLE MR.JUSTICE P.VADAMALAI

Tr.C.M.P(MD)No.526 of 2024
and
C.M.P(MD)No.12433 of 2024

Sabreen Banu ... Petitioner

Vs.

Shahul Hameed ... Respondent

PRAYER : Transfer Civil Miscellaneous Petition is filed under Section 24 of the Code of Civil Procedure, to withdraw the case in O.S.No.41 of 2024 from the file of the Family Court, Coimbatore and transfer the same to the file of the Sub Court, Aranthangi for disposal of the case on merits in accordance with law.

For Petitioner : Mr.R.Ramanujam
for M/s.Gandhi Associates

For Respondent : Mr.G.Rajaraman

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ORDER

This Transfer Civil Miscellaneous Petition is filed seeking for an order to withdraw the case in O.S.No.41 of 2024 on the file of the Family Court, Coimbatore and transfer the same to the file of the Sub Court, Aranthangi.

2. The petitioner is the wife and the respondent is the husband. The marriage between the parties was solemnized on 21.08.2016 as per Islamic tenets. Out of wedlock, the petitioner gave birth to a female child on 18.10.2017. Due to misunderstandings between them, the petitioner was left with her parental home along with her child. She is now residing with her parents. Thereafter, the respondent filed the petition in O.S.No.41 of 2024 before the Family Court, Coimbatore, for restitution of conjugal rights.

3. The learned counsel for the petitioner has submitted that the petitioner is residing with her aged parents along with the girl child. She is solely depending on the income of her old parents and she is not financially capable of conducting the case at Coimbatore. The respondent is working abroad with settled position and he is not maintaining the petitioner and her child. The petitioner has to travel 260 km for attending the Court and she

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finds it very difficult with the girl child. In the above circumstance, the petitioner has filed this present Transfer Civil Miscellaneous Petition.

4. The learned counsel for the respondent objected the petition. He further submitted that the petitioner herself left the matrimonial home, so, the respondent filed the main case for restitution of conjugal rights only. Further, the petitioner has filed this petition only to harass the respondent. The respondent is working abroad and maintaining his parents. The respondent averred in his case about the life threat by one Sherukkhan at the instance of the petitioner in Kottaipattinam. Hence, the petition may be dismissed.

5. Submissions of both sides 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 case for restitution of conjugal rights against the petitioner and the said case is pending before the Family Court, Coimbatore. 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. The respondent is working abroad,

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so he will not get prejudice in case of transfer. Moreover, the transfer is sought to Sub Court and hence, the appearance of the respondent in each and every hearing need not necessary except material hearing. Therefore, taking note of the settled proposition 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 O.S.No.41 of 2024 on the file of the Family Court, Coimbatore, is hereby withdrawn and transferred to the file of the Sub Court, Aranthangi, for disposal in accordance with law. The learned Judge, Family Court, Coimbatore, is directed to transmit the entire records pertaining to the case in O.S.No.41 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.

27.11.2024

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

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To

1.The Family Court,
Coimbatore.

2.The Sub Court,
Aranthangi.

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
Tr.C.M.P(MD)No.526 of 2024
and
C.M.P(MD)No.12433 of 2024

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