



Tr.C.M.(MD)No.586 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated:21/02/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

Tr.CMP (MD) No.586 of 2023

and

CMP (MD) No.13167 of 2023

Kartheeswari @ Tharakeswari : Petitioner/Respondent

Vs.

Muthukumar : Respondent/Petitioner

PRAYER:-Transfer Civil Miscellaneous Petition is filed under section 24 of the Civil Procedure Code, to pass an order withdrawing the divorce petition in HMOP No.185 of 2021 on the file of the Subordinate Court, Pudukkottai and to transfer the same to the file of the Subordinate Court, Ramanathapuram or Subordinate Court, Mudhukulathur and pass such other further orders.

For Petitioner : Mr.J.Barathan

For Respondent : Mr.A.Arul Jenifer
for M/s.KBS Law Office

O R D E R

This Transfer Civil Miscellaneous Petition is filed seeking transfer of the petition in HMOP No.185 of 2021 on the file of the Subordinate Court, Pudukkottai and to transfer the same to the file of the Subordinate Court, Ramanathapuram or Subordinate Court, Mudhukulathur.



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2. Facts in brief:-

The marriage between the parties took place, on 02/02/20006 at MGM Marriage Hall, Kattuparamakudi, Ramanathapuram District. At the time of marriage, sufficient sreethana and other articles were provided by the parents of the wife. Due to wedlock, they begotten a male child, on 12/11/2006. Thereafter, the husband and his family members harassed the wife demanding more dowry. Thereafter, HMOP No.166 of 2008 was filed by the husband seeking divorce and that was transferred to Sub Court, Paramakudi and renumbered as HMMOP No.13 of 2023. At that time, the wife filed HMOP No.52 of 2008 before the Sub Court Paramakudi, seeking restitution of conjugal rights. That was tried jointly. Divorce petition was dismissed and the restitution of conjugal petition was allowed. There was no appeal. The wife filed MC No.16 of 2014 before the Judicial Magistrate, Paramakudi for maintaining herself and her children. That was ordered, on 28/03/2019. But no amount was paid so far. Since no proper maintenance amount is paid, the petition filed seeking interim maintenance amount for herself and her children to the tune of Rs.30,000/-, apart from litigation expenses of Rs.15,000/-. The husband is earning more than Rs.1,00,000/- as Government Teacher. Apart from that, he is also having landed property.



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3.That was resisted by the husband stating that in pursuance of the above said order passed in MC No.16 of 2014, he is paying monthly maintenance amount without any default. The balance amount of Rs.4,02,000/- was also paid in pursuance of the order passed in Tr.CMP No.359 of 2022. Apart from that, it is also stated that the wife is an practising Advocate and earning Rs.30,000/- per month. That was also admitted by her during the proceedings in GWOP No.54 of 2019. As per the order of this court in CRP(MD)No.15 of 2023, it must be disposed of within a period of six months. He is ready for complying the above said order. After hearing both parties, the Sub Court, Pudukottai passed an order directing to pay Rs.3,000/- as interim maintenance and litigation expenses of Rs.20,000/-.

4.In the meantime, the respondent filed another divorce petition in HMOP No.185 of 2021 on the file of the Subordinate Court, Pudukottai on the ground of cruelty and desertion. So the wife filed a transfer petition in Tr.CMP(MD)No.359 of 2022 to withdraw the divorce petition in HMOP No.185 2021 on the file of the Subordinate Judge, Pudukottai and transfer the same to the Sub Court, Muthukulathur.



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5.Heard both sides.

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6.Now let us go to the earlier order passed by this court in Tr.CMP(MD)No.359 of 2022. That petition was dismissed as not pressed. The order was passed, on 22/11/2022. This is the second transfer petition. Now the reason for withdrawing the HMOP filed by the husband is mentioned in the grounds.

"8.So, I filed a transfer petition in Tr.C.M.P(MD)No.359 of 2022 to withdraw the divorce petition in HMOP No.185 of 2021 on the file of the Subordinate Court, Pudukkottai and to transfer the same to the file of the Subordinate Court, Paramakudi. In the meantime, I was appointed as Additional Public Prosecutor in the Additional Sessions Court, Paramakudi, on 27/10/2022. So when the transfer petition came up for hearing before this Honourable Court, the respondent represented that if the divorce petition is transferred to Subordinate Court, Paramakdi, there is every chance of influencing the court. So my counsel withdrew the transfer petition and the same was dismissed as withdrawn on 22/11/2022."



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7.Absolutely, this reason has not been mentioned in the above said order, dated 22/11/2022, in Tr.CMP(MD) No.359 of 2022.

8.Now the reason for filing the present petition is stated that she is suffering illness in the heart and the son is also studying 12th Standard. Apart from that, it is also stated that the Sub Court, Pudukottai has no jurisdiction to entertain this petition.

9.Now a short point arises for consideration is whether the second transfer petition is maintainable.

10.No doubt that as circumstance changes, grounds may also change for the second petition.

11.It is settled law that in the matrimonial proceedings, the convenience of the wife alone is a criteria to be taken into account. Whether the Sub Court, Pudukottai got jurisdiction to entertain this petition need not be gone into. Even though, objection was raised by the respondent to the effect that now the petitioner is appointed as Government Advocate, there is every possibility of influencing the court and in the light of the past conduct, the matter should not be transferred.



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12.But I am of the considered view that merely because the petitioner was appointed as Government Advocate appearing before the Sub Court, Paramakudi, that should not be the reason for transfer.

13.The reason being the male can travel any distance, but it may not be possible for the woman to travel such a long distance, especially appointed as Government Advocate appearing before the Sub Court, Paramakudi.

14.So I am of the considered view that considering the above said factual position of the parties, the matter is transferred to the Sub Court, Muthukulathur. So it may be convenient for both parties to appear.

15.In the result, this Transfer Civil Miscellaneous petition **allowed**. Accordingly, H.M.O.P.No.185 of 2021 on the file of the Sub Court, Pudukkottai stands transferred to the **Subordinate Court, Muthukulathur, Ramanathapuram District.** The Sub Court, Pudukkottai is directed to transmit the case papers to the Sub Court, Muthukulathur within a period of four weeks from the date of receipt of a copy of this order. After receiving the records, the Sub Court, Muthukulathur, may assign new number and



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conduct the trial, after issuing notice to the parties
for appearance and dispose the case in accordance with
law

16.With the above-said directions, the Transfer
Civil Miscellaneous Petition stands **allowed**. However,
there shall be no order as to costs.

22/02/2024

Index:Yes/No
Internet:Yes/No
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To,

- 1.The Sub Court,
Pudukkottai.
- 2.The Sub Court,
Muthukulathur.



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G.ILANGOVAN, J

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