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Tr.C.M.P(MD).No.635 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.01.2025

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Tr.C.M.P (MD).No.635 of 2024
and
C.M.P(MD)No.15222 of 2024

Sornalatha : Petitioner

Vs.

Esaki : Respondent

PRAYER: Transfer Civil Miscellaneous Petition is filed under Section 24 r/w 151 of Civil Procedure Code, to withdraw the case in H.M.O.P.No.208 of 2024 pending on the file of the Principal Sub Court, Tenkasi and transfer the same to the Family Court, Tirunelveli.

For Petitioner : Mr.T.Pradeep

For Respondent : No Appearance.

ORDER

The Transfer Civil Miscellaneous Petition has been filed seeking orders to withdraw the case in H.M.O.P.No.208 of 2024 pending on the file of the Principal Sub Court, Tenkasi and transfer the same to the Family Court, Tirunelveli.



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2. It is evident from the records that the marriage between the parties was solemnized on 06.12.2019. It is not in dispute that the petitioner has filed a petition in H.M.O.P.No.109 of 2023, seeking divorce and the same is pending on the file of the Family Court, Tirunelveli; that she has laid a complaint under the Domestic Violence Act in D.V.C.No.13 of 2022 and the same is pending on the file of the Judicial Magistrate Court No.IV, Tirunelveli and that she has also laid a maintenance case in M.C.No.14 of 2024, the same is pending on the file of the Family Court, Tirunelveli. It is also not in dispute that the respondent has filed a petition in H.M.O.P.No.208 of 204, seeking restitution of conjugal rights and the same is pending on the file of the Principal Sub Court, Tenkasi.

3.The learned counsel for the petitioner would submit that after filing of divorce petition, DVC case and the maintenance case, the respondent has filed the petition for restitution of conjugal rights before the Principal Sub Court, Tenkasi and she finds it very difficult to travel to Tenkasi to attend the hearings.

4. Despite receipt of notice, the respondent has not chosen to enter into appearance.



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5. In the case of ***N.C.V.Aishwarya Vs. A.S.Saravana Karthik Sha*** reported in ***2022 Live Law (SC) 627***, the Hon'ble Supreme Court has reiterated the position with generally, it is the wife's convenience, which must be looked at while considering the transfer petition under Section 24 of the Code of Civil Procedure and the relevant passage is extracted hereunder :

“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.”, the bench observed.”

6. Considering the facts and circumstances of the case and taking note of the place of the residence of the petitioner and also the pendency of the cases at Tirunelveli, this Court is of the view that the case in H.M.O.P.No.208



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of 2024, is ordered to be withdrawn from the file of the Principal Sub Court,

Tenkasi and transfer the same to the file of the Family Court, Tirunelveli.

Accordingly, the learned Principal Sub Judge, Tenkasi, is hereby directed to transmit the entire records in H.M.O.P.No.208 of 2024 to the file of the Family Court, Tirunelveli, within a period of 10 days from the date of receipt of a copy of this order and on receiving the case bundle, the learned Judge Family Court, Tirunelveli, is directed to take up the petition on file and proceed in accordance with law.

7. With the above direction, the Transfer Civil Miscellaneous Petition stands allowed. Consequently, connected Miscellaneous Petition is closed.
No costs.

22.01.2025

NCC : Yes/No

Index : Yes/No

Internet : Yes/No

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To

1.The Principal Sub Judge, Tenkasi.

2.The Judge, Family Court, Tirunelveli.

3.The Section Officer,

VR Section,

Madurai Bench of Madras High Court, Madurai.



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K.MURALI SHANKAR, J.

DAS

Order made in
Tr.C.M.P (MD).No.635 of 2024
and
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22.01.2025