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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.01.2025

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Tr.C.M.P.(MD)No.697 of 2024
and
C.M.P.(MD)No.16738 of 2024

A.L.Parvathavarthini ... Petitioner

Vs.

R.A.Nachiappan ... Respondent

Prayer : This Transfer Civil Miscellaneous Petition filed under Section 24 C.P.C., to withdraw the case in H.M.O.P.No.114 of 2024 on the file of the Sub Court, Melur and transfer to the file of learned Family Court, Salem to tag along with H.M.O.P.No.585 of 2023.

For Petitioner : Mr.T.Antony Arulraj

For Respondent : M/s.A.Bhuvaneswari

ORDER

The Transfer Civil Miscellaneous Petition is filed to withdraw the case on the file of the Subordinate Court, Melur, in H.M.O.P.No.114 of

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2024 and transfer the same to the file of the Family Court, Salem.

2. Heard the learned counsel on either side.

3. It is evident from the records that marriage between the petitioner and the respondent was solemnized on 07.06.2020. It is not in dispute that the petitioner has earlier filed a petition in H.M.O.P.No.585 of 2023 seeking divorce and the same is pending on the file of the Family Court, Salem, that the petitioner has also laid a maintenance claim in M.C.No.62 of 2023 and the same is pending on the file of the Family Court, Salem and that the petitioner has initiated proceedings under the Domestic Violence Act in D.V.C.No.53 of 2024 and the same is pending on the file of the Additional Mahila Court, Salem. It is also not in dispute that the respondent has filed a petition in H.M.O.P.No.114 of 2024 seeking restitution of conjugal rights and the same is pending on the file of the Subordinate Court, Melur.

4. The learned counsel appearing for the petitioner would submit that after filing of the divorce petition and other proceedings, the

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respondent has purposely filed the present restitution petition before the Subordinate Court, Melur. He would further submit that the petitioner is residing at Chinnathirupathi, Salem District and is having a 3 years old male child and she finds it difficult to travel to Melur to attend the hearings.

5. The learned counsel appearing for the respondent would submit that the matter may be referred to mediation, for which, the learned counsel appearing for the petitioner has raised objections stating that the proceedings came to be initiated 1½ years before the Salem Courts and purposely the present restitution petition came to be filed before the Melur Court.

6. 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 :

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"*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.*"

7. Considering the above facts and circumstances and also taking note of the fact that the petitioner is residing at Salem and also the petitioner's divorce petition and other proceedings are pending before the Salem Courts, this Court is of the view that the case in H.M.O.P.No.114 of 2024 is ordered to be withdrawn from the file of the Subordinate Court, Melur, and transfer the same to the file of the Family Court, Salem. Accordingly, the learned Subordinate Judge, Melur, is hereby directed to transmit the entire records in H.M.O.P.No.114 of 2024 to the file of the

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Family Court, Salem, 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 of Family Court, Salem, is directed to take up the petition on file and proceed in accordance with law.

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

23.01.2025

NCC :yes/No
Index :yes/No
Internet:yes/No
csm

To

1. The Subordinate Judge,
   Melur.

2. The Judge,
   Family Court, Salem.

3.The Section Officer,
  VR Section,
  Madurai Bench of Madras High Court,
  Madurai.

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K.MURALI SHANKAR,J.

csm

Order made in
Tr.C.M.P.(MD)No.697 of 2024
and
C.M.P.(MD)No.16738 of 2024

Dated : 23.01.2025

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