

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

Tr.C.M.P.No.48 of 2022

and

C.M.P.No.1125 of 2022

M.Ramya

... Petitioner

Vs.

N.Sathishkumar

... Respondent

Prayer: Transfer CMP is filed under Section 24 of the Civil Procedure Code, to transfer the HMOP No.392 of 2017 on the file of the Family Court at Salem to Sub Court, Hosur who is having a competent jurisdiction.

For Petitioner : Ms.Pozhil Ilavenil
For Mrs.V.Porkodi

For Respondent : Mr.H.Shabeer Ali
For Mr.R.Krishna Prasad
For M/s.Sarvabhauman Associates

ORDER

The petition for transfer is filed to transfer the HMOP No.392 of 2017 on the file of the Family Court at Salem to Sub Court, Hosur.

2. The marriage between the petitioner and the respondent was solemnized on 06.04.2014 as per the Hindu Rites and Customs. A male child was born from and out of the wedlock between the petitioner and the respondent and now living with the petitioner. Due to misunderstanding, the petitioner and the respondent are living separately.

3. The learned counsel for the petitioner states that the petitioner was residing at Salem and at that point of time, she filed a divorce petition in HMOP No.392 of 2017 on the file of the Family Court at Salem. Thereafter, the petitioner joined with her aged parents at Hosur and she is unemployed. The petitioner has to take care of her minor child aged about 7 years and therefore, she cannot spend, travel and contest the case now pending before the Family Court at Salem.

4. The learned counsel for the respondent raised an objection by stating that the petitioner has not produced any document to establish that she has shifted her residence to Hosur. The present petition is to transfer the case from the Family Court, Salem to the Sub Court, Hosur and without any such shifting of residence, the petitioner would not have filed such a petition and an inference in this regard would be sufficient enough to consider the transfer petition in the present case. The petitioner has to take care of 7 years old child and therefore, the present petition is to be considered.

5. The principles regarding transfer petitions, more specifically in the matters of matrimonial cases, are well settled through the three decisions of the High Court of Madras, in the following cases:-

(i) The Hon'ble Division Bench of the High Court of Madras in ***W.A.No.1181 of 2009, dated 09.07.2010***, wherein in paragraphs-21 and 22, it has been observed as under:-

“21. The domicile or citizenship of the opposite party is immaterial in a case like this. In case the marriage was solemnized under Hindu Law marital relationship is governed by the

provisions of the Hindu Marriage Act. Therefore, Section 19 has to be given a purposeful interpretation. It is the residence of the wife, which determines the question of jurisdiction, in case the proceeding was initiated at the instance of the wife.

22. While considering a provision like Section 19 (iii-a) of the Hindu Marriage Act, the objects and reasons which prompted the parliament to incorporate such a provision has also to be taken note of. Sub Clause (iii-a) was inserted in Section 19 with a specific purpose. Experience is the best teacher. The Government found the difficulties faced by women in the matter of initiation of matrimonial proceedings. The report submitted by the Law Commission as well as National Commission for Women, underlying the need for such amendment so as to enable the women to approach the nearest jurisdictional court to redress their matrimonial grievances, were also taken note of by the Government. Therefore such a beneficial provision meant for the women of our Country should be given a meaningful interpretation by Courts.”

(ii) In yet another case in ***Tr.CMP.Nos.138 and 139 of 2006, dated 30.08.2006***, the High Court of Madras has considered the following judgments of Hon'ble Supreme Court of India:-

*“(1) In the case of **Mona Aresh Goel vs. Aresh Satya Goel [(2000) 9 SCC 255]**, when the wife pleaded that she was unable to bear the traveling expenses and even to travel alone and stay at Bombay, the Supreme Court ordered transfer of proceedings.*

*(2) In the case of **Geeta Heera vs. Harish Chander Heera [(2000) 10 SCC 304]**, the Hon'ble Supreme Court has held that where the petitioner's wife has pleaded lack of money, the same has to be considered.*

*(3) In the case of **Lalita A.Ranga vs. Ajay Champalal Ranga [(2000) 9 SCC 355]**, the wife has filed a petition to transfer the proceedings initiated by the husband for divorce, at Bombay. The place of residence of the wife was at Jaipur, Rajasthan. In that case, the petitioner is having a small child and that she pleaded difficulty in going all the way from Jaipur to Bombay to contest the proceedings from time to time. Considering the*

distance and the difficulties faced by the wife, the Supreme Court has allowed the transfer petition.

*(4) In a decision in **Archana Singh vs. Surendra Bahadur Singh [(2005) 12 SCC 395]**, the wife has sought for transfer of matrimonial proceedings and a divorce petition has been filed by the respondent's husband at Baikunthpur to be transferred to Allahabad, where the petitioner's wife was residing, on the ground that it would be difficult for her to undertake such long distance journey, particularly in circumstances, in which she finds that the proceedings under Section 125 Cr.P.C. was already pending before the Family Court, Allahabad. Considering the difficulties faced by the wife and also the long distance journey, the Honourable Supreme Court was pleased to order transfer of the proceedings to Allahabad.”*

(iii) In a decision made in **TR.CMP(MD)No.108 of 2010, dated 03.03.2011**, the Madurai Bench of Madras High Court, wherein in paragraph-18, it has been observed as below:-

“18. It is true that section 19 of the Hindu Marriage Act, has been amended by insertion of proviso of (iii)(a) to section 19. Of Course, this

amended section 19(iii)(a) gives special preference to the wife to file a petition or defending the case of the husband before the Court within whose jurisdiction she resides. The intention of the Legislature is to safe-guard the interest and rights of the women, who are being subjected to harassment and cruelty. But this special preference conferred under section 19(iii)(a) of the Hindu Marriage Act shall not be used to wreck vengeance on the husband. There must be a justifiable cause to select the jurisdiction of the Court where she resides.”

6. The learned counsel for the respondent states that the respondent, being a father is paying the monthly maintenance to the child. It is the bounded duty of the father to maintain the child, since the wife is unemployed in the present case. Thus, the respondent is directed to continue the maintenance payment in the interest of the child.

7. It is brought to the notice of this Court that in many number of the petitions filed seeking maintenance are either not disposed of nor interim maintenance has been granted. Apart from the spouse, the interest of the

minor children are to be taken note of by the Courts, while considering the applications for grant of maintenance. On account of the matrimonial dispute between the husband and wife, the right of the child cannot be denied.

8. State being the protector of minor children in certain circumstances, the social implications in this regard are to be considered by the courts, while dealing with the maintenance petition. In all such cases, where the maintenance petitions are filed, the court has to consider the interest and livelihood of the children and in case the mother, who filed the maintenance petition is unemployed, then interim maintenance must be ordered to protect the livelihood of the child in the custody of the mother.

9. In other words, if a *prima facie* case is made out for grant of maintenance, then in the absence of any formal petition, an interim maintenance to be ordered by the Courts considering the status, life style and the assets possessed by the parties concerned.

10. Decent life is facet of Article 21 of the Constitution of India. Life does not mean a mere animal life and the interest of the child is to be of paramount importance and to be protected by the Courts, whenever the parents neglect their children. In case of matrimonial dispute, anyone of the parent is neglecting the child and in such circumstances even in the absence of any formal petition, the Courts are bound to grant interim maintenance considering the factors stated above. The principles laid down by the Apex Court in the case ***Rajnish Vs. Neha and another reported in [(2021) 2 SCC 324]*** is to be followed scrupulously for the purpose of grant of maintenance, whether interim or otherwise.

11. In view of the facts and circumstances, the Family Courts and the other Courts dealing with matrimonial matters must ensure that the interest of the minor children is taken care of and their livelihood is protected by all possible means. In view of the fact that large number of maintenance petitions are kept pending by the Courts across the State of Tamil Nadu and no final orders are passed, this Court is of the considered opinion that in such circumstances, the Fundamental Rights of the minor children are infringed on account of such pendencies for an indefinite period. It is

needless to state that after granting the interim maintenance or otherwise, the Courts must ensure that the maintenance amount is recovered punctually and in the event of any failure, stern actions are to be initiated against the violators. There cannot be any compromise in the matter of protecting the livelihood of the children and the Courts are expected to show sensitivity in such issues, where the right of a children are infringed.

12. In view of the facts and circumstances, the HMOP No.392 of 2017 pending on the file of the Family Court, Salem stands transferred to the Sub-Court, Hosur forthwith. The Family Court, Salem is directed to transmit the case papers to the Sub-Court, Hosur within a period of four (4) weeks from the date of receipt of copy of this order.

13. With the abovesaid directions, the Transfer Civil Miscellaneous Petition stands allowed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

07.12.2022

Skr/Jeni
Index : Yes
Speaking order

To

1.The Judge,
Family Court,
Salem.

2.The Judge,
Sub Court,
Hosur.

S.M.SUBRAMANIAM, J.

Skr

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