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Rajitha M.V vs Nishanth

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Court : Kerala

Decided On : Mar-01-2023

Judge : Honourable Mr.Justice C.S.Dias

Appeal No. : Tr.P(C)/306/2021

Appellant : Rajitha M.V

Respondent : Nishanth

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS WEDNESDAY, THE 1ST DAY OF MARCH 2023 / 10TH PHALGUNA, 1944 TR.P(C) NO. 306 OF 2021 IN OP 841/2019 OF FAMILY COURT, PALA PETITIONER: RAJITHA M.V AGED 33 YEARS W/O. NISHANTH, CHIRAVELIKAL HOUSE, UZHAVOOR P.O., NOW RESIDING AT PANGATTUPARAMBIL HOUSE, MURINGOOR P.O., MANDIKUNNU-680309. BY ADV M.VANAJA RESPONDENT: NISHANTH S/O. SASI, UZHAVOOR P.O., PERUNTHANAM, PIN-680309. THIS TRANSFER PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 01.03.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -:2:- Dated this the 1st day of March, 2023

ORDER

The transfer petition is filed under Section 24 of the Code of Civil Procedure,1908(in short, 'C.P.C.'), seeking to transfer O.P.No.841/2019 from the Family Court, Pala to the Family Court, Irinjalakuda.

2. The petitioners case, in brief, in the

memorandum of transfer petition is that, she is the wife of the respondent. The marital relationship is strained. They have a son born in their wedlock. The respondent has refused to maintain the petitioner and the son. The petitioner had filed M.C.No.36/2017 before the Family Court, Irinjalakuda, against the respondent, for an order of maintenance. The maintenance case was allowed by ordering the respondent to pay an amount of Rs.4,000/- per mensem to the petitioner and Rs.3,000/- per mensem to the son. The respondent has refused to comply with the said -:3:- order. There is no person to chaperone the petitioner from Irinjalakuda to Pala to contest O.P.No.841/2019. Hence, the transfer petition.

3. Heard; Smt M. Vanaja, the learned counsel appearing for the petitioner. Even though notice has been served on the learned counsel appearing for the respondent before the court below, there is no appearance for him

4. The law with respect to transfer of

proceedings, particularly matrimonial disputes, is no longer res integra, in view of the categoric declaration of law by the Hon'ble Supreme Court in Sumitha Sing V. Kumar Sanjay and another [(2001)10 SCC 41)], Mona Aresh Goel V. Aresh Satya Goel [(2000) 9 SCC 255], Vaishali Shridhar Jagtap V. Shridhar Vishwanath Jagtap [AIR 2016 SC 3584], Santhini V. Vijaya Venkatesh [2017 (4) KLT 415 (SC)], N.C.V. -:4:- Aiswarya v. A.S. Sharavana Karthik Sha[2022(5) KHC 185] and Valsal Nisha v. Rajesh Soman Nair [2020(8) KLR 475]. The Hon'ble Supreme Court has

held that it is the convenience of the woman and

children that has to be looked into, while ordering the transfer of a case from one Court to another.

5. In the light of the law laid down in the afore-cited decisions, the uncontroverted pleadings

and materials on record and the totality of the facts

and circumstances of the case, particularly the fact that the petitioner and the son are residing within the jurisdiction of the Family Court, Irinjalakuda, I am inclined to exercise the discretionary powers of this Court under Section 24 of the C.P.C. and order the transfer of O.P.No.841/2019. In the result, I allow the transfer petition as follows: -:5:-

(i) O.P.No.841/2019 is transferred from the Family Court, Pala to the Family Court, Irinjalakuda.

(ii) The Registry shall forthwith forward a copy of the order to the Family Court, Pala with instructions to transmit the records in O.P.No.841/2019 to the Family Court, Irinjalakuda.

(iii) The Family Court, Irinjalakuda shall, immediately on receipt of the records in O.P.No.841/2019, issue notice to the parties for their appearance. Sd/- C.S.DIAS,JUDGE DST/01.03.23 //True copy/ P.A.To Judge

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