

Shahana vs Aneesh S

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Court : Kerala

Decided On : Mar-27-2023

Judge : Honourable Mr.Justice C.S.Dias

Appeal No. : Tr.P(C)/796/2022

Appellant : Shahana

Respondent : Aneesh S

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS MONDAY, THE 27TH DAY OF MARCH 2023 / 6TH CHAITHRA, 1945 TR.P(C) NO. 796 OF 2022 IN OP 828/2022 OF FAMILY COURT, ALAPPUZHA PETITIONER: SHAHANA AGED 32 YEARS SHAMEER MANZIL, KARAMOODU, PATHANAPURAM PO, PATHANAPURAM - NOW RESIDING AT AMRITHA APARTMENT, GROUND FLOOR, PATHANAPURAM PO, KOLLAM., PIN - 689695 BY ADVS. NOBEL RAJU C.R.JAYAKUMAR RESPONDENT: ANEESH S AGED 35 YEARS SAAZ KARAMANASSERY, SANATHANAM WARD, MULLACKAL VILLAGE, ALAPPUZHA., PIN - 688001 THIS TRANSFER PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 27.03.2023, THE

COURT ON THE SAME DAY DELIVERED THE FOLLOWING: :2: Dated
this the 27th 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.828/2022(Annexure-A1) from the Family Court, Alappuzha to the Family Court, Kottarakkara.

2. The petitioners case, in brief, in the memorandum of transfer petition is that, she is the wife of the respondent. They have a son born in their wedlock. The petitioner and the son are presently residing in her parental home in Kottarakkara. The respondent has refused to maintain the petitioner and the child. The petitioner has filed M.C.No.338/2021 and O.P.No.477/2021, before the Family Court, Kottarakkara, against the respondent, for an order of maintenance and a decree for recovery of money and :3: and gold ornaments, respectively. The respondent is contesting the above two cases before the Family Court, Kottarakkara. Therefore, no inconvenience would be caused to him, in Annexure-A1 being transferred. Hence, the transfer petition.

3. Heard; Sri.Nobel Raju, the learned counsel appearing for the petitioner. Even though notice has been served on the respondent, 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 categorical 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. :4: Vijaya Venkatesh [2017 (4) KLT 415 (SC)], N.C.V. 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 M.C.No.338/2021 and O.P.No.477/2021 are pending before the Family Court, Kottarakkara, and the respondent is contesting the proceeding before the said court, I am inclined to exercise the discretionary powers of this Court under Section 24 of the C.P.C. and

order the transfer of Annexure-A1, so that the cases

:5: can be consolidated and jointly tried, which would save judicial time and avoid conflict of decisions. In the result, I allow the transfer petition as follows:

(i) O.P.No.828/2022 is transferred from the Family Court, Alappuzha to the Family Court, Kottarakkara.

(ii) The parties would be at liberty to move the Family Court, Kottarakkara and seek for the consolidation and joint trial of all the cases between them.

(iii) The Registry shall forthwith forward a copy of the order to the Family Court, Alappuzha with instructions to transmit the records in Annexure-A1 to the Family Court, Kottarakkara.

(iv) The Family Court, Kottarakkara shall,

immediately on receipt of the records in :6: Annexure-A1, post the case along with M.C.No.338/2021 & O.P.No.477/2021. Sd/- C.S.DIAS,JUDGE DST/27.03.2023
//True copy/ P.A.To Judge :7: APPENDIX PETITIONER ANNEXURES
ANNEXURE A1 A TRUE COPY OF THE PETITION IN O.P. NO. BEFORE THE
FAMILY COURT, ALAPPUZHA. RESPONDENTS EXHIBITS: NIL