

Junitha vs Mohammed Jihās

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Court : Kerala

Decided On : Jun-27-2022

Judge : Honourable Mr.Justice C.S.Dias

Appeal No. : Tr.P(C)/72/2021

Appellant : Junitha

Respondent : Mohammed Jihās

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS MONDAY, THE 27TH DAY OF JUNE 2022 / 6TH ASHADHA, 1944 TR.P(C) NO. 72 OF 2021 IN OP(MMA)NO.1140/2020 OF FAMILY COURT, ATTINGAL
PETITIONER/RESPONDENT: JUNITHA, AGED 24 YEARS, D/O.SOFIYA BEEGUM, YAHJAS MANZIL, MEMANA, OACHIRA P.O., KARUNAGAPALLY, KOLLAM DISTRICT. BY ADV K.RAKESH
RESPONDENT/PETITIONER: MOHAMMED JIHAS, AGED 30 YEARS, S/O.ABDUL HAKKIM, JIHAS MANZIL, ELAPPIL, MELVETTOOR P.O., VARKALA TALUK, THIRUVANANTHAPURAM DISTRICT, PIN-695 312. BY ADV G.VIDYA THIS TRANSFER PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 27.06.2022, THE COURT ON THE SAME

DAY DELIVERED THE FOLLOWING: -:2:- Dated this the 27th day of June,2022

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(MMA).No.1140/2020 (Annexure-A), from the Family Court, Attingal, to the Family Court, Chavara.

2. The petitioner's case, in brief, in the

memorandum of transfer petition is that; she is the wife of the respondent. Due to the matrimonial cruelty that was meted out on her by the respondent, she has filed M.C.No.304/2019 (Annexure-C) before the Family Court, Chavara. The petitioner and the respondent had earlier filed O.P.(MMA)No.143/2020 before the Family Court, Chavara, to dissolve the marriage on mutual consent. However, by Annexure-B

-:3:- judgment, the said original petition was dismissed as not pressed. Thereafter, the respondent has filed Annexure-A before the Family Court, Attingal, seeking a decree to declare that he has pronounced Talaq on the petitioner. The petitioner is permanently residing at Karunagapally. It would be difficult for her to contest Annexure-A before the Family Court, Attingal. Moreover, the respondent has not sought for the transfer of Annexures-C. Therefore, necessarily, he would have to appear before the Family Court, Chavara, to contest Annexure-C. Hence, the transfer petition.

3. Heard; Sri. K. Rakesh, the learned counsel appearing for the petitioner and Smt. G. Vidya, the learned counsel appearing for the respondent.

4. The law with respect of transfer of proceedings, particularly matrimonial disputes, is no longer res integra, in view of the categorical -:4:-

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)] 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, especially the fact that Annexure-C is already pending before the Family Court, Chavara, and that the petitioner is residing at Karunagapally, I am inclined to exercise the -:5:- discretionary powers of this Court under Section 24 of the C.P.C. and order the transfer of the Annexure-A. Moreover, if the cases are consolidated and jointly tried by the same court, it would save the precious judicial time and avoid conflict of decisions. In the result,

(i) The transfer petition is allowed, by ordering the transfer of O.P(MMA).No.1140/2020 from the Family Court, Attingal to the Family Court, Chavara.

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

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

(iv) The respondent would be at liberty to move the Family Court, Chavara, and seek for -:6:- dispensation of his personal appearance.

(v) The Family Court, Chavara, shall, immediately

on receipt of the records in Annexure-A, post the case along with Annexure-C. Sd/- C.S.DIAS,JUDGE DST/27.06.22 //True copy/ P.A.To Judge -:7:- APPENDIX PETITIONER ANNEXURES ANNEXURE A TRUE COPY OF THE ORIGINAL PETITION FILED BY THE RESPONDENT AS OP(MMA) NO.1140/2020 DATED, 01.10.2020. ANNEXURE B TRUE COPY OF THE JUDGMENT DATED, 04.09.2020 OF THE CHAVARA FAMILY COURT IN OP(MMA) NO.143/2020. ANNEXURE C TRUE COPY OF THE PETITION IN MC NO.304/2019 OF THE FAMILY COURT, CHAVARA FILED BY THE PETITIONER DATED 12.12.2019. RESPONDENTS EXHIBITS: NIL

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