

iswarya Vs. P. Rangesh

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Court : Chennai

Decided On : Aug-14-2009

Reported in : (2009)8MLJ1377

Judge : K.K. Sasidharan, J.

Appeal No. : Tr. C.M.P. No. 15 of 2009 and M.P. No. 1 of 2009

Appellant : iswarya

Respondent : P. Rangesh

Advocate for Def. : K. Hariharan, Adv.

Advocate for Pet/Ap. : C. Jagadish, Adv.

Disposition : Petition allowed

Judgement :

ORDER

K.K. Sasidharan, J.

1. This is an application filed by the respondent in H.M.O.P. No. 189 of 2008 on the file of Sub Court, Chengalpattu and the prayer is to withdraw the said proceedings for the purpose of transfer to the Principal Sub-Court, Mayiladuthurai.

BACKGROUND FACTS:

2. The marriage between the petitioner and the respondent was solemnised on 31.8.2005 at Sirkali near Kumbakonam. They were blessed with a female child. The matrimonial life was cordial during the initial period. However trouble started on account of the involvement of the respondent's mother and it led to a quarrel between the petitioner and the respondent. Since the torture given to the petitioner by the respondent and his parents were unbearable the petitioner preferred a police complaint before All Women Police Station, Chengalpattu.

3. Since the relationship between the parties got strained on account of several reasons, the petitioner filed an application for restitution of conjugal rights before the Sub Court, Mayiladuthurai. The said petition was filed on 20.2.2008. The respondent filed H.M.O.P. No. 189 of 2008 before the Sub Court, Chengalpattu.

4. While the proceedings were pending before the respective courts, the respondent filed an application before this Court in Tr.C.M.P. No. 299 of 2008. The prayer in the transfer petition was to withdraw the proceedings from the file of the Principal Subordinate Court, Mayiladuthurai and to transfer the same to the file of the Principal Subordinate Court, Chengalpattu. The said application was resisted by the petitioner. Though she also claimed in her counter that it would be in the fitness of things to transfer the proceedings in H.M.O.P.N.189 of 2008 to the file of the learned Subordinate Judge, Mayiladuthurai, the learned Judge considered the transfer petition only in the light of the prayer made therein and ultimately the petition was dismissed as per order dated 11.11.2008.

5. Subsequently the present transfer petition has been filed by the wife to transfer the proceedings in H.M.O.P. No. 189 of 2008 from the file of the Subordinate Judge, Chengalpattu to the Court of Subordinate Judge, Mayiladuthurai for a joint disposal along with H.M.O.P. No. 31 of 2008.

6. In the affidavit filed in support of the application for transfer it was the contention of the petitioner that she is residing along with her family at Keelaichalai, which is said to be a very small village near Sirkali. The petitioner has no independent source of income and she is at the mercy of her father, who is stated to be a pensioner. She has also to look after her minor child also. The distance between Sirkali and Chengalpattu is about 300 kms and in view of her poor financial

condition, she was not in a position to meet her expenses as well as to defray the expenses necessary for her attendance before the trial court. According to the petitioner she has to look after her aged mother as well as her minor child and as such it would be impossible for her to prosecute the proceedings in H.M.O.P. No. 189 of 2008. Accordingly she prayed for transfer of the proceedings.

7. The respondent has filed his counter affidavit wherein he has narrated the entire background facts. According to the respondent there was no necessity to transfer the proceedings from the file of Sub Court, Chengalpattu as the petitioner could appear before the said Court without difficulties. According to the respondent the witness to prove his case are all from Maraimalai nagar, which is about 10 kms away from Chengalpattu and as such it would be impossible for him to prove his case in the event of the matter being transferred to the Court at Mayiladuthurai. The respondent further contended that in the earlier round of litigation between the parties this Court found that a joint trial was not necessary and as such the plea for transfer on account of joint trial has no merit. The respondent also contested the claim of the petitioner that she is not employed, as according to him she is employed in a Primary school at Sirkali earning a sum of Rs. 2,000/- per month. Accordingly the respondent prayed for dismissal of the transfer petition.

DISPOSAL:

8. It is true that in the earlier transfer petition, while denying the claim for transfer made by the respondent, the petitioner has also requested transfer of the proceedings to the Sub Court, Mayiladuthuri. However the court was concerned only with the prayer made by the respondent to transfer the proceedings in H.M.O.P. No. 31 of 2008 from the Principal Sub Court Mayiladuthurai to the file of Sub Court, Chengalpattu. The prayer for transfer was negatived by this Court mainly on account of the difficulties faced by the petitioner.

9. The following observation as contained in the order dated 11.11.2008 in Tr.C.M.P. No. 299 of 2008 supports the claim made by the revision petitioner in the present transfer petition.

Considering the rival contentions, in as much as the respondent/wife, her minor daughter and her widowed mother are depending on the father's pension amount and since the respondent/wife or her family cannot travel at Keelaichalai a very small village near Seerkali from Mayiladuthurai to Chengalpattu for the purpose of hearing of H.M.O.P. No. 189 of 2008 filed by the petitioner/husband pending on the file of Sub Court, Chengalpattu and moreover, for hearing of the case at Chengalpattu, she has to necessarily come along with male help or support for every hearing of the case, the convenience of respondent/wife in the present case stands on a better footing, on an overall assessment of the facts situation of the case and preferring the convenience of the respondent/wife, this Court dismisses the transfer CMP filed by the petitioner/husband, in the interest of justice, leaving the parties to bear their own costs.

10. The order dated 11.11.2008 in Tr.C.M.P. No. 299 of 2008 has become final. There was a clear finding by this Court that the petitioner is depending on her father for her maintenance and considering her residence in a remote village near Sirkali, it would be impossible for her to appear before the court at Chengalpattu. This Court also has given a factual finding that the convenience of the revision petitioner stands on a better footing. The said finding still holds good and as such the respondent cannot be heard to say that the petitioner has not made out a ground for transfer. A perusal of the order of this Court dated 11.11.2008 in Tr.C.M.P. No. 299 of 2008 in its entirety would clearly shows that this Court was not considering the request to transfer the proceedings to the court at Chengalpattu at the instance of the respondent.

11. The only issue which was considered by this Court earlier was regarding the merits of the transfer petition filed by the respondent to transfer the proceedings from the court at Mayiladuthurai. Therefore it cannot be said that the transfer petition filed by the revision petitioner to transfer the proceedings from the Sub court Chengalpattu to the Sub Court, Mayiladuthurai is not maintainable.

12. This Court in *Sudha v. Vaidyanathan* 2001 AIHC 1567, set out certain guidelines with respect to transfer of matrimonial proceedings. The guidelines would read thus:

(a) If the woman has the custody of any child, born out of wedlock, less than five years of age,

(b) If anyone of the spouse suffers due to any physical disability; or any chronic illness as would render him or her difficult to travel which should be duly certified by a Surgeon/physician in Government Service.

(c) Where the respondent in Transfer Petition does not have objection to the transfer or where the respondent in the Transfer Petition also resides in the same place;

(d) Where the joint trial of proceedings pending in two places are sought for, it would be decided on the basis of the date of filing the petition and the petition filed subsequently will be transferred to the place where the earlier petition had been filed;

(e) Last place of residence should be a permanent place or if temporary, for an indefinite period of residence and not a place where the living was only casual or transitory.

(f) Where there is positive evidence such as police complaint, etc. at the husband's place, prima facie establishing that the wife had been subjected to physical torture or dowry harassment.

(g) If none of the aforementioned nor any other justifiable reason is available for transfer, then the person seeking transfer should be ready to pay the incidental expenses, like travelling expenses, for stay during the hearing to the other spouse, either a consolidated amount or fixed amount for each hearing should be paid during the previous hearing itself.

13. The proceedings initiated by the petitioner before the Sub Court, Mayiladuthurai was prior in point of time. The petitioner is having a minor child of about three years old to be looked after by her. The petitioner is not gainfully employed so as to enable her to defray the expenses for attending the court at Chengalpattu.

14. While deciding an application for transfer, the paramount consideration would be the ends of justice and in case the Court is of the view that ends of justice would be met only by transfer, the matter has to be transferred. It is not the mere convenience of the parties alone which is material. In case it is demonstrated that the trial in a chosen forum would result in denial of justice to a party to the proceeding, the same is a valid ground to order transfer of proceedings.

15. Therefore on a careful consideration of the entire factual matrix, I am of the view that the petitioner has made out a case for transfer of the proceedings from the Sub Court, Chengalpattu.

16. The respondent was mainly concerned with his difficulties to examine Witnesses on his side as all his witnesses are stated to be residing near Chengalpattu. The respondent also expressed his difficulty to appear before the Court at Mayiladuthurai. The personal attendance of the respondent is not required for prosecuting the matter before the Sub court, Mayiladuthurai. Similarly it would enable him to file an application for examination of witnesses on commission in case he finds it difficult to bring the witnesses to the Court at Mayiladuthurai on account of justifiable reasons. Therefore the respondent is at liberty to apply before the learned Subordinate Judge, Mayiladuthurai to dispense with his personal attendance as well as to examine the witnesses on commission.

17. In the result, the proceedings in H.M.O.P. No. 189 of 2008 is withdrawn from the file of Sub Court, Chengalpattu and is transferred to the file of the Principal Sub-Court, Mayiladuthurai.

18. The transfer petition is allowed as indicated above. Consequently the connected MP is closed. No costs.

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