

(2009) 01 MAD CK 0300

Madras High Court

Case No: Transfer C.M.P. No. 285 of 2008

K. Saravanan

APPELLANT

Vs

M. Chitra

RESPONDENT

Date of Decision: Jan. 1, 2009

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 24

Citation: (2009) 2 LW 917

Hon'ble Judges: M. Venugopid, J

Bench: Single Bench

Advocate: S. Ayyadurai, for the Appellant; S. Muthukumar, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

M. Venugopid, J.

The petitioner/husband has filed this Transfer C.M.P.285 of 2008 before this Court praying for issuance of an order to transfer the I.A. No. 16/2008 in HMOP. 106/2007 from the file of the Sub-Court, Thirupathur, to the file of the District Court, Vellore, where G.O.P. 14/2008 is pending. The petitioner herein is the husband. The respondent is the wife. The marriage between the parties has taken place on 30.08.2001 and they have been residing at Viswareddipalayam Village, Radhapuram Post, Villupuram Taluk. As a result of the wedlock, the respondent/wife has given birth to a female child, Yamuna, who is aged 7 years.

2. The averment of the petitioner/husband is that the respondent/wife used to spend money to her parents house without the knowledge of the petitioner and on questioning, she picked up quarrel with him for no reasons and on 13.10.2004, she took the child and went to her parents house without informing him and inspite of several Panchayats, she did not return to his house and further that she filed HMOP.93/2004 on the file of the Sub-Court, Villupuram for the relief of restitution of

conjugal rights and he has been called on 23.10.2004 by the Station House Officer of All Women Police Station, Thirupathur on a complaint given by his wife for dowry harassment and later, she agreed to return back to the matrimonial house and in HMOP.93/2004, an ex-parte decree has been passed on 2.2.2005 for restitution of conjugal rights since his wife has been set ex-parte on account of her absence and later he has filed HMOP.45/2006 on the file of the Sub-Court, Villupuram for divorce and the same has been transferred to the Sub-Court, Tirupattur by an order of this Court dated 10.01.2007 made on the Tr.C.M.P.298/2006 filed by the wife and that he has filed GOP.47/2007 praying for the custody of the child, his daughter from his wife before the District Court, Villupuram and that his wife filed Tr.C.M.P. No. 502/2007 for transferring the GOP.47/2007 to the Sub-Court, Tirupattur and after contest, this Court has passed an order in Tr.C.M.P.502/2007 on 6.2.2008 directing the transfer of the said G.O.P.47/2007 to the District Court, Villupuram having jurisdiction over the matter and the said GOP on transfer has been taken on file by the District Court, Vellore.

3. That apart, the respondent/wife has filed an I.A. 16/2008 in HMOP.106/2007 before the Sub-Court, Thirupathur praying for a sum of Rs. 10,000/- towards maintenance of the 7 years old child, to be paid by the husband and that the respondent/husband has filed I.A.16/2008 in April, 2008 praying for maintenance to her child and that she ought to have filed the same before the District Court, Vellore having jurisdiction over the GOP.14/2008. But she has deliberately filed the same before the Sub-Court, Tirupattur in the HMOP proceedings, with a view to protract the proceedings and the proper forum for deciding the I.A. 16/2008 for maintenance is the District Court, Vellore having jurisdiction over GOP. 14/2008 filed for the custody of the child by the petitioner/husband and therefore, the application for transfer may be allowed by this Court in the interest of justice.

4. The respondent/wife has taken the stand inter alia stating that the petitioner/husband has filed HMOP.93/2004, HMOP.45/2006 before the Sub-Court, Villupuram and GOP.47/2007 before the District Court, Villupuram, Cr.M.P.962/2007 before the Judicial Magistrate, Villupuram and Crl.R.C.29/2008 before the District Court, Villupuram and that she will be put into irreparable loss and hardship to attend the court at Vellore with her child and that the petitioner/husband has not shown any reason to transfer the I.A. 16/2008 from the file of the Sub-Judge to the file of the District Court, Vellore and that the petitioner/husband has not participated in the enquiry/trial of HMOP and dragging on the same and therefore prays for dismissal of the transfer petition.

5. It is to be noted that the guiding principle of dealing with an application u/s 24 of CPC is that the petition ought not to be dealt with in a light fashion and transfer of a case from one court to another should not be granted readily for any whimsical reason of the petitioner. For the purpose of transfer, the balance of convenience of the parties shall be considered. A Court of law is to find out whether a particular

party has chosen a forum in utter disregard to the convenience of the parties for some ulterior object and in abuse of his position as an arbiter litus. The exercise of the powers u/s 24 is the convenience and inconvenience of the parties. The aspect of expediency will depend upon the facts and circumstances of each case. But the prime consideration for exercise of that power must be to meet the ends of justice. The prime consideration is that justice according to law is done. In transfer of matrimonial petitions, generally the convenience of the wife will be taken note of. As a matter of fact, the inconvenience or difficulty visualised u/s 24 CPC for transfer of a case should be of such nature which may lead to injustice, if an individual is asked to continue the trial at a place, where it has been laid or when the court comes to the conclusion that the proceedings has been filed in a particular court for causing injustice. Indeed in regard to the transfer of a case from one Court to another, the relevant consideration is failure of justice and therefore, a case is to be made out that the party has a reasonable apprehension that justice will be denied to him.

6. It cannot be gainsaid that in Tr.C.M.P.298/2006, dated 10.01.2007, this Court has inter alia directed the transfer of HMOP.45/2006 pending on the file of the learned Sub-Judge, Villupuram to the file of the learned Sub-Judge, Tirupattur and also directed the learned Sub-Judge, Thirupathur to dispose of the HMOP.45/2006 within a period of three months from the date of receipt of a copy of that order.

7. In the High Court's Roc. No. 2065/85-FI in P.Dis. No. 101/85, dated 17.06.85, the Subordinate Courts have been informed that whenever a direction has been issued by the High Court, the Subordinate Courts concerned,

1. should dispose of the proceeding pending on their file within the time specified in the order of the High Court and report the fact to the High Court immediately after disposing of the proceeding concerned;

2. and should make a request to the High Court for extension of time for carrying out the direction well in advance with the date specified in the order of the High Court, stating the reasons therefor and the further time required, if for any reason the Subordinate Court concerned is not able to comply with the order of the High Court within the time specified and further that all the Subordinate Courts have been informed that any lapse or delay in this regard will be viewed seriously.

Admittedly, I.A.16/2008 in HMOP. 106/2007 on the file of the Sub-Judge, Tirupattur has been in part-heard, evidence stage and the matter has been posted to 4.12.2008 as informed by the respondent/wife's counsel. But the prayer of the petitioner/husband is to transfer the I.A. 16/2008 in HMOP. 106/2007 pending on the file of Sub-Court, Tirupattur to the file of the District Court, Vellore, where GOP. 14/2008 is pending for the custody of the minor child. In fact, the petitioner/husband has not sought the transfer of the main HMOP. 106/2007 pending on the file of the Sub-Court, Tirupattur, but has only prayed for the transfer of I.A. 16/2008 in HMOP. 106/2007. When the fact situation is that I.A. 16/2008 is

pending in part-heard stage evidence, then this Court opines that it is not possible for this Court to transfer the I.A. 16/2008 in HMOP. 106/2007 pending on the file of the Sub-Court, Tirupattur to the file of the District Court, Vellore, where admittedly the GOP. 14/2008 is pending and in that view of the matter, this Tr.C.M.P. fails and the same is hereby dismissed. No costs.