

S. Tamizhvani Vs C. Johnson @ Vinayagamoorthy

Court: Madras High Court

Date of Decision: Dec. 2, 2008

Hon'ble Judges: M. Venugopal, J

Bench: Single Bench

Advocate: V.P. Rajendran, for the Appellant; R. Karthikeyan, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

M. Venugopal, J.

The petitioner/wife has filed the present Tr.C.M.P. praying for an issuance of an order by this Court to withdraw the

H.M.O.P. No. 35 of 2008 pending on the file of Fast Track Court at Ponneri and to transfer the same to the II Additional Family Court, Chennai.

2. The petitioner/wife's marriage has taken place on 21.04.1994 as per Hindu Rites and Custom. At the time of her marriage, the

respondent/husband has been serving in Indian Army as Nayak. The petitioner/wife is now in employment as Junior Engineer in the Tamil Nadu

Electricity Board. The respondent/husband after his stint with the Indian Army is now serving as a Security Officer in a private company. As a

result of the wedlock, the petitioner has two issues through the respondent/husband. The petitioner/wife's children are studying in 8th standard and

4th standard respectively.

3. The respondent/husband has filed H.M.O.P. No. 35 of 2008 praying for a decree of divorce against the petitioner/wife before the Sub Court,

Ponneri.

4. The learned Counsel for the petitioner/wife urges before this Court that the petitioner/wife has never lived with the jurisdiction of the Sub Court,

Ponneri and that the respondent/husband has given false address as if she lived with him at Thiruvottiyur and that the petitioner/wife is depending

solely on her aged parents and she has to bring her aged parents to accompany her to attend a matrimonial case at Ponneri and she has got the

responsibility to arrange for some one to bring her children from school and that the distance from Chennai to Ponneri and the conveyance is also a

tedious one and therefore, prays for transferring H.M.O.P. No. 35 of 2008 to the file of II Additional Family Court, Chennai.

5. The learned Counsel for the petitioner/wife brings it to the notice of this Court that on 17.09.2007 counter has been filed in H.M.O.P. No. 35 of

2008 before the Sub Court, Ponneri and immediately the said case has been transferred to Fast Track Court at Ponneri and that the very transfer

of the case for trial before the Fast Track Court without conducting any counseling for union is a vitiated one and that the petitioner/wife has filed

maintenance case, M.C.No.466 of 2008 now pending on the file of II Additional Family Court at Chennai and therefore, it is equitable for this

Court to order the transfer CMP in the interest of justice.

6. Contending contra, the learned Counsel for the respondent/husband submits that initially the petitioner/wife was living at Ramapuram with him

and subsequently she has shifted her residence to Porur and now in the transfer CMP, she has given the address at New Washermanpet, Chennai-

81 and since the petitioner/wife changes her residential address, the respondent/husband is not in a position to know her address and therefore, he

has filed the HMOP proceedings at Ponneri and further that the petitioner/wife is employed as Junior Engineer in Tamil Nadu Electricity Board and

that the petitioner/wife goes to office daily at 8'o clock in the morning and she returns only during the evening at 8.00 p.m. and before the Fast

Track Court, Ponneri, the petitioner/wife need not appear for every hearing of the case unlike that of the Family Court and H.M.O.P. No. 35 of

2008 is ripe for trial at the Fast Track Court, Ponneri and even if any conciliation is to be done, the same can be done at the Fast Track Court at

Ponneri and therefore, prays for dismissal of the transfer CMP.

7. Even though the H.M.O.P. No. 35 of 2008 has been transferred to the file of Fast Track Court, Ponneri, till this date the same has not been

taken up for trial and disposed of. However, the learned Counsel for the petitioner/wife contends that the convenience of the wife has to be taken

into account by a Court of law while dealing with the transfer petition and to lend support to his contention he relies on the decision Harpreet Kaur

Vs. Rajwant Singh, wherein it is inter alia observed that "transfer of case to place where lady is residing would be preferred by Court unless

special reasons exist and the case has been transferred from Ambala to Amritsar." He also relies on the decision Samita Bhattacharjee v.

Kulasekar Bhattacharjee I (2008) DMC 354 (SC) whereby the Hon"ble Supreme Court has observed that "we are of the view that the Title Suit

(Divorce) No. 98 of 2006 titled as Dr. Kulashekhar Bhattacharjee v. Smt. Samita Bhattacharjee pending before the Family Court West Tripura,

Agartala, be transferred to the Court of learned District Judge, Howrah, West Bengal, who will either decide the same himself or assign it to any

other Court of competent jurisdiction." Added further, he also brings it to the notice of this Court to the decision Smt. P. Himabindu Vs. P.

Jayasimharaja, wherein it is inter alia held that "the convenience of wife and issue of performance of marriage to prevail etc."

8. It is an axiomatic fact that when a Court of law deals with the transfer petition in regard to matrimonial proceedings it has to take note of the

convenience of both parties. Generally, the convenience of the wife will prevail over that of the husband. However, one cannot brush aside an

important fact that justice will have to be meted out to the parties.

9. As far as the present case is concerned, the matrimonial proceedings H.M.O.P. No. 35 of 2008 filed for the relief of divorce by the

respondent/husband before the Sub Court, Ponneri is now pending on the file of Fast Track Court at Ponneri. Admittedly, the petitioner/wife has

filed M.C. No. 466 of 2008 praying for maintenance in respect of her two children before the II Additional Family Court at Chennai and the same

is also pending. In view of the fact, on the side of the petitioner/wife, a plea of jurisdiction of the Court at Ponneri is projected and since the case is

now pending on the file of Fast Track Court at Ponneri, this Court is of the considered view that the plea of jurisdiction to entertain the said

matrimonial proceedings and deal with the same, can be raised before the Fast Track Court at Ponneri itself by the petitioner/wife and the Fast

Track Court, Ponneri is also directed to conduct counseling between the parties so as to explore the possibility for reunion and in that view of the

matter, at this stage, this Court is not inclined to allow the transfer petition and the same is hereby dismissed.

10. In the result, the Tr.C.M.P. is dismissed. The Fast Track Court, Ponneri is directed to take up the plea of point of jurisdiction and before

taking such a plea it shall conduct counseling so as to explore the possibility for reunion between the parties and if there is failure of conciliation or

there is no room for conciliation then, in the interest of parties, it shall proceed with the conduct of the main HMOP and to dispose of the same

within a period of two months from the date of receipt of copy of this order, uninfluenced with any of the observations made by this Court in this

revision. It is open to the petitioner/wife to file appropriate application before the Fast Track Court at Ponneri and seek exemption from personal

hearing and on such application being filed, the trial Court is directed to consider the same liberally and to dispose of the same in accordance with

law. There shall be no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.