

**(2013) 10 MAD CK 0214**

**MADRAS HIGH COURT**

**Case No:** Tr.C.M.P. No.282 of 2013 and M.P. No.1 of 2013

Aadhi Lakshmi @ Yazhini

APPELLANT

Vs

D. Ashok Kumar

RESPONDENT

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**Date of Decision:** Oct. 3, 2013

**Citation:** (2013) 3 MadWN(Civil) 638

**Hon'ble Judges:** S. Tamilvanan, J.

**Bench:** Single Bench

**Advocate:** V. Murugesan, Advocate, for the Petitioner; R. Gandhi, Senior Counsel for R. Chandrasudan, Advocate, for the Respondent

**Final Decision:** Disposed Off

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### **Judgement**

**S. Tamilvanan, J.**—Heard the learned Counsel appearing for the Petitioner as well as the learned Senior Counsel appearing for the Respondent.

2. This Tr.C.M.P. has been filed under Section 24 of the Code of Civil Procedure seeking an Order to Transfer the case in HMOP No. 183 of 2012 pending on the file of the Sub-Court at Tambaram to the Sub-Court, Srivilliputtur.

3. It is an admitted fact that the Petitioner is the wife of the Respondent who filed HMOP No. 183 of 2012 under Section 13(1)(a) of the Hindu Marriage Act, 1955 seeking dissolution of marriage. The marriage was solemnized on 19.11.1999 between the Petitioner and the Respondent as per the Hindu Rites and Customs.

4. Learned Counsel appearing for the Petitioner submits that the Petitioner being a woman finds it difficult in attending the HMOP No. 183 of 2012 pending on the file of the Sub-Court, Tambaram. It is also an admitted fact that the Petitioner and the Respondent have two male children studying Sixth Standard and First Standard, respectively.

5. Mr. R. Gandhi, learned Senior Counsel appearing for the Respondent submitted that earlier there was similar Transfer C.M.P filed by the Petitioner herein in Tr.C.M.P

No. 4 of 2006 and that was dismissed by this Court (S.R. Singharavelu, J.) by Order dated 30.1.2006. However, suppressing the aforesaid factum, the Petitioner has filed the present Tr.C.M.P., hence, the same has to be dismissed on the ground of suppression of material fact and further, learned Senior Counsel appearing for the Respondent submitted that it is a part-heard case and the Petitioner/Respondent herein was examined in chief, hence, seeking transfer of the HMOP is only a delay tactics and not sustainable.

6. On the aforesaid facts and circumstances, the Petitioner in Tr.C.M.P cannot casually file a Petition seeking transfer of HMOP No. 183 of 2012 pending on the file of the Sub-Court, Tambaram to the Sub-Court, Srivilliputtur and it has to be construed as abuse of process of law. In the earlier order dated 31.01.2006 passed in Tr.C.M.P., this Court observed thus:

"4. In these circumstances, the Principal Subordinate Judge, Chengalpattu is directed not to press the presence of the wife in every hearing excepting for tendering evidence and other unavoidable circumstances for the proceedings; and even when the wife attends the hearings at Chengalpattu, the travelling expenses fixed by the trial Judge will have to be paid by the husband on that day itself."

Relying on the decisions rendered by the Hon"ble Supreme Court, in **Vimka Devi Gaur v. Anil Kumar Jain, 2001 All.L.J.31**; and **G. Saroja v. P. Jayavelu, 2009 (4) CTC 174**, the learned Senior Counsel appearing for the Respondent argued that the Transfer C.M.P has to be dismissed as not maintainable. In **Anindita Das v. Srijit Das, 2006 (9) SCC 197**, the Hon"ble Apex Court referring various earlier decisions of the Supreme Court has held that showing leniency in favour of woman in Matrimonial cases, causes encouraging large number of Transfer Petitions being filed by women taking advantage of such leniency. Therefore, the Court has to consider the Transfer C.M.P based on the reasonableness of the plea such as health or other genuine grounds.

7. In **G. Saroja v. P. Jayavelu, 2009 (4) CTC 174**, Transfer C.M.P. filed by the wife was dismissed and a direction was given to the husband to bear the expenses of his wife along with her companion for attending the case proceedings. In **Vimla Devi Gaur v. Anil Kumar Jain, 2001 All.L.J.31**, Allahabad Bench has dismissed the transfer of Petition as the Application had been filed suppressing the fact of dismissal of earlier Applications for transfer. Such misstatement of material facts amounts to Criminal Contempt. However, in view of unconditional apology tendered by the Applicant therein, no action for contempt was taken against the person who suppressed the material facts.

8. According to the learned Senior Counsel appearing for the Respondent, the Petitioner has not disclosed the fact that earlier Transfer C.M.P. filed by her was dismissed by this Court. On a perusal, it is seen that the Petitioner herein has not stated anything about the Order dated 31.1.2006, which could be construed as

suppression of facts.

9. As submitted by the learned Senior Counsel appearing for the respondent, there was an earlier HMOP filed by the Respondent seeking divorce, there was a compromise at the instance of the elders to their family and they were living together after the compromise. However, again there was dispute arose between the Petitioner and the Respondent. Hence, the Respondent herein filed the present HMO No. 183 of 2012 before the Sub-Court, Tambaram.

10. It is not in dispute that the Petitioner has not disclosed the dismissal of the earlier Transfer C.M.P. in this Petition. As contended by the learned Counsel appearing for the Respondent, it has to be construed as suppression of material facts and further, admittedly, the present HMOP is a part-heard case pending before the Sub-Court, Tambaram.

11. Considering the facts and circumstances, as per the earlier Order passed by this Court (S.R. Singharavelu, J.), I am of the views that the Respondent/husband could be ordered to pay travelling expenses of the Petitioner/wife, to meet the ends of justice. Considering the submission made by both the learned Counsel, the Respondent, husband of the Petitioner is directed to pay Rs. 5,000/- towards her Travelling Expenses and cost.

12. With the above observations, this Transfer Petition is dismissed. Consequently, connected Miscellaneous Petition is closed. No order as to costs.