

(2000) 06 MAD CK 0037

In the Madras High Court

Case No : Transfer CMP No. 4267 of 2000 and CMP.No. 4268 of 2000

S. Balaji

APPELLANT

Vs

Mrs. Anandhi and another

RESPONDENT

Date of Decision : 27-06-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 24

Citation : (2000) 3 CTC 441 : (2000) 4 RCR(Civil) 316 : (2000) 4 RCR(Criminal) 233

Hon'ble Judges : V. Kanagaraj, J

Bench : Single Bench

Advocate : Mr. D. Ashok Kumar, for the Appellant;

Judgement

1. The above Transfer CMP has been filed by the husband against the wife and the minor child praying to withdraw and transfer the maintenance

case filed by the respondent wife in MC.No.13 of 1999 pending on the file of the Court of District Munsif Cum Judicial Magistrate, Neyveli to the

file of the Court of II Additional Family Court, Chennai.

2. On a perusal of the affidavit filed in support of the above petition and upon hearing the learned counsel for the petitioner in the absence of either

the respondents or their counsel on record, what comes to be known is that the case instituted by the husband which is pending in Chennai is

HMOP No.1116 of 1997 is for dissolution of the marriage.

3. It would further be known that the petitioner-husband also filed yet another petition of this sort in HMOP No.1362 of 1996 praying for

restitution of conjugal rights of the respondent and on certain grounds, he had to withdraw the same. The only valid reason that is offered on the

part of the petitioner-husband seeking for transfer of the other matter that is

pending on the file of the Court of District Munsif cum Judicial

Magistrate, Neyveli in MC.No.13 of 1999 claiming maintenance filed by the respondent-wife against the petitioner-husband herein is that the

petitioner is employed here and he has to attend to his duty on every working day and hence he may not be able to attend the case pending at Neyveli

whenever it is posted and called. Therefore, it is clear that for the sake of convenience of the husband, he seeks for transferring the maintenance

case instituted by the wife at Neyveli so as to be heard and decided along with the petition that is pending before the family Court, Chennai seeking

dissolution of the marriage.

4. On the contrary, though neither the respondents nor their counsel on record appeared to put forth their arguments, still, it is open to the

knowledge of everybody that the first respondent being a woman, that too without any source to occur for maintaining herself and her minor child,

have gone to the court claiming maintenance from her husband wherein her husband has sought for dissolution of the marriage from the respondent.

Besides being incapacitated to meet out the expenses, the respondent being a lady, making her travel from Neyveli to Chennai often whenever the

case gets posted is not an easy task and every insecurity prevails in making her journey, staying over night, etc. Therefore, it is undesirable on the

part of this court to order this petition as prayed for by the petitioner-husband. Hence, in all probabilities, the above petition for transferring the

case pending at Neyveli to that of the Family Court, Chennai cannot be granted.

5. The learned counsel for the petitioner would cite an already decided case in CMP.No.16514 of 1997 held between the same parties wherein

the petition filed by the husband had been ordered and adhering the same, would request this Court to pass an order allowing this petition. The

best reason assigned by the learned Judge in the above cited case is that in spite of the respondent having been served, she had not taken any step

to appear before this Court and that the reasons for transfer is to avoid conflicting decisions by different forums as the parties are same and the

dispute is one relating to their matrimonial relationship and hence, the learned single Judge has allowed this petition.

6. The absence of a party today in the opinion of this court cannot in any manner deprive the legal rights which are enshrined under law. Secondly,

though both the petitions pending before the Family Court in Chennai and the Court of District Munsif cum Judicial Magistrate, Neyveli have arisen

between one and the same parties, among which the one is for dissolution of the marriage filed by the husband and the other is claiming

maintenance from the husband by the wife. Even in the event the marriage is dissolved, still, the wife becomes eligible for maintenance till such time

she gets married a second time. Hence, absolutely, no conflicting interest would arise even in the event that both the above petitions are heard and

decided independently.

7. The learned counsel for the petitioner would cite yet another decision of this court (between the same parties) in a petition of transfer filed by the

respondent-wife, herein against the petitioner-husband wherein the respondent had asked for a joint trial to be held transferring HMOP No.1116

of 1997 pending on the file of the II Additional Family Court, Chennai to be heard along with MC No.91 of 1997. Even here, the learned Judge

citing the earlier remark offered in the other case cited above stating that the Judge had passed the order noting that the petitioner-wife therein in

spite of having been served with notice, had not taken steps to appear before that court and, therefore, the petition in Tr.CMP No.16514 of 1997

came to be allowed and whereas, in the petition filed by the respondent-wife, the learned Judge had passed orders dismissing the petition filed by

the wife to transfer the other case filed by the husband to Neyveli. Therefore, the order passed by the learned single Judge in the said petition also

cannot hold good for a decision to be arrived at in this transfer petition since it has been decided only based on the first case cited above which

cannot be dismissed on account of non-appearance of the party.

8. Under any circumstance, the petition filed by the husband to transfer the case of the wife in the name of being heard along with the petition filed

by him for dissolution of marriage pending on the file of the II Additional Family Court, Chennai, cannot be sustained.

9. In result, the above Transfer CMP fails and the same is dismissed. Consequently, CMP No.4268 of 2000 is also dismissed. No costs.