

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

&

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

MONDAY, THE 24TH DAY OF JULY 2023 / 2ND SRAVANA, 1945

TR.APPEAL(C) NO. 6 OF 2023

AGAINST THE ORDER DATED 14.06.2023 IN Tr.P(C) NO.169 OF
2023 OF THE HIGH COURT OF KERALA

APPELLANT/PETITIONER:

DIVYA JOSE

AGED 29 YEARS, D/O JOSE JOSEPH, PANAMKUNNEL
HOUSE, NEAR BSNL EXCHANGE, VALAVOOR, VALAVOOR
P.O, KOTTAYAM DISTRICT -686635 NOW RESIDING AT
H064, BLOCK -4 DLF NTH, SEAPORT-ARIPOORT ROAD,
KAKKANAD - 682037, PIN - 682037.

BY ADV ANITHA MATHAI MUTHIRENTHY

RESPONDENT/RESPONDENT:

STEAPHEN ANTONY VENANSIOUS

AGED 37 YEARS, S/O JOHNY NICOLAS VENANSIOUS,
I.T. PROFESSIONAL, RESIDING AT APARTMENT 19B,
GOLD TOWER, 1/144, CHEMBUMUKKU, VAZHAKKALA,
KOCHI - 682030 AND HAVING PERMANENT RESIDENCE
AT 'MARY MAJOR', MWRA NO. 43, OPPOSITE
COLLECTOR'S BUNGALOW, MUNDAKKAL WEST, KOLLAM
CITY, KOLLAM - 691001.

BY ADVS.

SHAIJAN C.GEORGE

VINAI JOHN

HASHMI V.Z.

SUJITHA S.

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Transfer Appeal (C) Nos.6 and 7 of 2023

THIS TRANSFER APPEAL(CIVIL) HAVING COME UP FOR
ADMISSION ON 24.07.2023, ALONG WITH Tr.Appeal(C) .7/2023,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN
&
THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR
MONDAY, THE 24TH DAY OF JULY 2023 / 2ND SRAVANA, 1945
TR.APPEAL(C) NO. 7 OF 2023
AGAINST THE ORDER DATED 14.06.2023 IN Tr.P(C) 166 OF 2023
OF THE HIGH COURT OF KERALA

APPELLANTS/PETITIONERS/RESPONDENTS:

- 1 DIVYA JOSE,
 AGED 29 YEARS, D/O JOSE JOSEPH, PANAMKUNNEL
 HOUSE, NEAR BSNL EXCHANGE, VALAVOOR, VALAVOOR
 P.O, KOTTAYAM DISTRICT -686635 NOW RESIDING AT
 H064, BLOCK -4 DLF NTH, SEAPORT-ARIPOORT ROAD,
 KAKKANAD - 682037.
- 2 BETTY JOSE,
 AGED 58 YEARS,
 W/O JOSE JOSEPH, PANAMKUNNEL HOUSE, NEAR BSNL
 EXCHANGE, VALAVOOR, VALAVOOR P.O, KOTTAYAM
 DISTRICT -686635.
- 3 JOSE JOSEPH,
 AGED 62 YEARS, S/O JOSEPH PANAMKUNNEL,
 PANAMKUNNEL HOUSE, NEAR BSNL EXCHANGE,
 VALAVOOR, VALAVOOR P.O, KOTTAYAM DISTRICT
 -686635.

BY ADV ANITHA MATHAI MUTHIRENTHY

Transfer Appeal (C) Nos.6 and 7 of 2023

RESPONDENTS/RESPONDENTS/PETITIONERS:

- 1 STEAPHEN ANTONY VENANSIOUS
 AGED 37 YEARS, S/O JOHNY NICOLAS VENANSIOUS,
 I.T. PROFESSIONAL, RESIDING AT APARTMENT 19B,
 GOLD TOWER, 1/144, CHEMBUMUKKU, VAZHAKKALA,
 KOCHI - 682030 AND HAVING PERMANENT RESIDENCE
 AT 'MARY MAJOR', MWRA NO. 43, OPPOSITE
 COLLECTOR'S BUNGALOW, MUNDAKKAL WEST, KOLLAM
 CITY, KOLLAM - 691001.
 - 2 JOHNY NICOLAS VENANSIOUS
 AGED 72 YEARS, S/O JOHNY NICOLAS, RESIDING AT
 'MARY MAJOR', MWRA NO. 43, OPPOSITE COLLECTOR'S
 BUNGALOW, MUNDAKKAL WEST, KOLLAM CITY, KOLLAM,
 PIN - 691001.
 - 3 KAMEELA VENANSIOUS
 AGED 64 YEARS, W/O JOHNY NICOLAS VENANSIOUS,
 RESIDING AT 'MARY MAJOR', MWRA NO. 43, OPPOSITE
 COLLECTOR'S BUNGALOW, MUNDAKKAL WEST, KOLLAM
 CITY, KOLLAM, PIN - 691001.
- BY ADVS.
SHAIJAN C.GEORGE
VINAI JOHN
HASHMI V.Z.
SUJITHA S.

THIS TRANSFER APPEAL(CIVIL) HAVING COME UP FOR
ADMISSION ON 24.07.2023, ALONG WITH Tr.Appeal(C).6/2023,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

P.G. Ajithkumar, J.

The petitioners in Transfer Petition (C) Nos.16 and 169 of 2023 have filed these appeals under Section 5 of the Kerala High Courts Act, 1957. They are aggrieved of the order of the learned Single Judge by which O.P.(Divorce) No.724 of 2022 and O.P.(G&W) No.591 of 2022 on the files of the Family Court, Pala was transferred to the Family Court, Alappuzha.

2. Heard the learned counsel appearing for the appellants and the learned counsel appearing for the respondents.

3. The appellant-Divya Jose is the wife and the respondent-Stephen Antony Venansious is the husband. They have a child. Following estrangement in the marital life, the respondent filed O.P.(Divorce) No.724 of 2022 before the Family Court, Pala on the ground of cruelty. It was also alleged that the marriage was a nullity. O.P.(G&W) No.591 of 2022 was filed by the 1st respondent along with his parents seeking custody of the 11 (eleven) months old child. That was

also filed before the Family Court, Pala. The appellant filed Transfer Petition (C) No.169 of 2023 seeking transfer of O.P. (Div) No.724 of 2022 and Transfer Petition (C) No.166 of 2023 for the transfer of O.P.(G&W) No.591 of 2022 from Family Court, Pala to Family Court, Ernakulam. In both, the reasons stated for the transfer is that the appellant-wife is residing at Ernakulam and her traveling to Pala along with her child of tender age to attend the court proceedings at frequent intervals is quite inconvenient.

4. The respondent-husband vehemently resisted the petitions for transfer, to the Family Court, Ernakulam particularly. Several reasons have been stated to object to the transfer. It was contended that he is now working at Bangalore and therefore transferring the cases to Family Court, Ernakulam, where he has no interest or place of abode is inconvenient. Further, his father-in-law brutally manhandled him and as such transferring the case to the Family Court at Ernakulam where the appellant and his parents are residing will pose threat to his safety and security. The respondent

even alleged that the counsel of the appellants, who is practicing at Ernakulam also has illwill against him. The learned Single Judge after hearing both sides transferred both the cases from Family Court, Pala to Family Court, Alappuzha by holding as follows:-

"3. At the fag end of the argument, the learned counsel for the respondent fairly submitted that the case can be transferred to any other court either at Alappuzha or at any court convenient to the parties except the court at Ernakulam. The apprehension is found to be well placed and as such, both the cases pending before the Family Court, Pala will stand withdrawn and transferred to the Family Court at Alappuzha. Send the records forthwith. The parties shall appear before the Court at Alappuzha, the transferee court on 30/06/2023."

5. On 06.07.2023, the learned counsel appearing for the appellants sought time stating that the objection filed by the respondents in the Transfer Petitions were omitted to be incorporated along with the memorandum of appeals.

6. On 11.07.2023, the learned counsel appearing for the appellants submitted that having the transfer petitions

been disposed of soon after filing of the counter-affidavit by the respondents, the appellant could not file a reply-affidavit. On that ground the appellant sought time so as to file an affidavit. The appellants have filed affidavits in both these appeals producing therewith Exts.B1 to B7. In the affidavit a few fresh contentions and allegations are raised by the appellants.

7. During the course of arguments the learned counsel for the appellants would submit that the respondents did not contend earlier that he was working at Bangalore and that his apprehension and fear of coming over to Ernakulam to attend the Family Court is without any basis. In fact, it is the respondent, who was posing threat to the safety of the appellants and even the child. Therefore, the learned counsel would urge that the order of the learned Single Judge transferring the original petitions to the Family Court, Alappuzha is incorrect. It is also submitted that the appellants travelling to Alappuzha along with 11 months old child is quite difficult and therefore the impugned orders require interference.

8. The learned counsel appearing for the respondents, per contra, would submit that there is absolutely no reason for transferring the original petitions from Family Court, Pala and even if transferred, it cannot be to the Family Court, Ernakulam. The learned counsel would point out that as a result of the physical attack by his father-in-law he had to undergo treatment as an inpatient. In the view of the learned counsel for the respondents, if the respondents were to attend the Family Court at Ernakulam there is every possibility of even physical attack by his father-in-law, who is a resident of Ernakulam, with the aid of his henchmen.

9. We have anxiously considered the rival contentions. In the matter of deciding the request for a transfer, the allegations and counter allegations raised by the parties have no much relevance. The apprehension raised by the respondent-husband that there is possibility of physical attack by his father-in-law and his men has some basis; since there was an earlier incident where he was allegedly manhandled by his father-in-law. Certainly, the convenience of the wife has to

be given predominance while selecting a court for the trial of matrimonial litigations between the spouses. However, in the facts and circumstances of these cases as are borne out from the records, it is required in the interest of justice to avoid transfer of the petitions to the Family Court at Ernakulam. Transferring the cases to Family Court, Alappuzha is inconvenient to both parties. When it is totally inconvenient for the appellant, who sought transfer of the cases, it is only appropriate to alter the said order. We are of the view that both O.P.(Divorce) No.724 of 2022 and O.P.(G&W) No.591 of 2022 shall be transferred to the Family Court, Irinjalakuda. By transferring the cases to the Family Court, Irinjalakuda, the comparative inconvenience to both the parties, particularly to the wife will be less.

In the result, the appeals are disposed of and the order dated 14.06.2023 in Transfer Petition (C) Nos.166 and 169 of 2023 are modified. O.P.(Divorce) No.724 of 2022 and O.P. (G&W) No.591 of 2022 on the files of the Family Court, Pala are transferred to the Family Court, Irinjalakuda. The Family

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Court, Pala is directed to transmit the records to the Family Court, Irinjalakuda.

Sd/-
ANIL K. NARENDRAN, JUDGE

Sd/-
P.G. AJITHKUMAR, JUDGE

dkr

Transfer Appeal (C) Nos.6 and 7 of 2023

APPENDIX OF TR.APPEAL(C) 6/2023

PETITIONER ANNEXURES

ANNEXURE A1	A TRUE COPY OF THE DISCHARGE SUMMARY DATED 8.3.2022
ANNEXURE A2	A TRUE COPY OF THE COMPLAINT DATED 20.12.2022 FILED BY THE APPELLANT AND HER PARENTS
ANNEXURE A3	A TRUE COPY OF THE ORDER DATED 24.9.2022
ANNEXURE A4	A TRUE COPY OF THE ORDER DATED 10.3.2022
ANNEXURE A5	A TRUE COPY OF TR.P(C) 169/2022 DATED 09.03.2023 FILED BEFORE THIS HON'BLE COURT
ANNEXURE B1	A TRUE COPY OF THE DISCHARGE SUMMARY DATED 8.3.2022 ISSUED BY LAKESHORE HOSPITAL
ANNEXURE B2	A TRUE COPY OF THE COMPLAINT DATED 20.12.2022 FILED BY THE APPELLANTS BEFORE THE SHO, PALA
ANNEXURE B4	A TRUE COPY OF THE IA NO.7/2023 IN OP(GW) 591/2022
ANNEXURE B3	A TRUE COPY OF THE ORDER DATED 10.3.2023 IN TR.P(C) 166/2023
ANNEXURE B5	A TRUE COPY OF THE ORDER DATED 11.4.2023 IN TR.P (C) 166/2023
ANNEXURE B6	A TRUE COPY OF THE ORDER DATED 3.6.2023 IN IA 5/2022 IN OP(GW) 591/2022
ANNEXURE B7	A TRUE COPY OF THE ORDER DATED 5.7.2023 IN OPFC NO. 386/2023 OF THE HONOURABLE HIGH COURT OF KERALA

Transfer Appeal (C) Nos.6 and 7 of 2023

APPENDIX OF TR.APPEAL (C) 7/2023

PETITIONER ANNEXURES

ANNEXURE A1	A TRUE COPY OF THE DISCHARGE SUMMARY DATED 8.3.2022 ISSUED BY VPS LAKESHORE HOSPITAL, ERNAKULAM
ANNEXURE A2	A TRUE COPY OF THE COMPLAINT DATED 20.12.2022 FILED BY THE APPELLANTS BEFORE SHO, PALA POLICE STATION.
ANNEXURE A3	A TRUE COPY OF THE ORDER DATED 24.9.2022 IN IA 1/22 IN OP 591/22
ANNEXURE A4	A TRUE COPY OF THE ORDER DATED 10.3.2023 IN TR.P (C) 166/2023
ANNEXURE B1	A TRUE COPY OF THE DISCHARGE SUMMARY DATED 8.3.2022 ISSUED BY LAKESHORE HOSPITAL
ANNEXURE B2	A TRUE COPY OF THE COMPLAINT DATED 20.12.2022 FILED BY THE APPELLANTS BEFORE THE SHO, PALA
ANNEXURE B4	A TRUE COPY OF THE IA NO.7/2023 IN OP (GW) 591/2022
ANNEXURE B6	A TRUE COPY OF THE ORDER DATED 3.6.2023 IN IA 5/2022 IN OP (GW) 591/2022
ANNEXURE B3	A TRUE COPY OF THE ORDER DATED 10.3.2023 IN TR.P (C) 166/2023
ANNEXURE B5	A TRUE COPY OF THE ORDER DATED 11.4.2023 IN TR.P (C) 166/2023
ANNEXURE B7	A TRUE COPY OF THE ORDER DATED 5.7.2023 IN OP (FC) NO. 386/2023 OF THE HONOURABLE HIGH COURT OF KERALA