

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

MISC. CIVIL APPLICATION NO.21 OF 2014

Prachi w/o Prashant Deshmukh,
Age : 33 years, Occ. Household,
R/o C/o Chandrashekhar Appaji Pawar,
35/4, Gut No.452, Sudarshan Housing
Society, Sambhaji Nagar, Jalgaon,
Dist. Jalgaon ..APPLICANT

VERSUS

Prashant s/o Malharrao Deshmukh,
Age : 36 years, Occ. Business,
R/o Shri Gajanan Krupa,
Plot No.45, Sahakar Nagar,
Aurangabad, Dist. Aurangabad ..RESPONDENT

Mr Nitin B. Suryawanshi, Advocate for applicant;
Mr Hemant Surve, Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 28th July, 2015

ORAL ORDER :

Heard Mr Suryawanshi, learned Counsel appearing on behalf of the applicant and Mr Surve, learned Counsel on behalf of the respondent.

2. By the present Misc. Civil Application, the applicant – wife has sought transfer of Case No.A-505/2013, pending in the Family Court, Aurangabad to the Court of Civil Judge Senior Division, Jalgaon.

3. The grounds, on which the transfer of the proceedings is sought for, are as under :-

The applicant and respondent were married on 13th June, 2013 and started residing at Aurangabad. Out of the said wedlock, son Rajvardhan was born in 2007, who is admittedly in the custody of the applicant-wife. It is claimed by the wife that she was driven out of matrimonial home on 5th May, 2013 along with her son, which has resulted in filing of the three proceedings by her, namely, Criminal Misc. Application No.527 of 2013 under section 125 of the Code of Criminal Procedure in the Court of the Judicial Magistrate First Class, Jalgaon; Special Civil Suit No.414 of 2013 in the Court of Civil Judge Senior Division, Jalgaon, seeking maintenance under section 18 of Hindu Adoption and Maintenance Act and Criminal Misc. Application No.529 of 2013, in the Court of the Judicial Magistrate First Class, Jalgaon, under the provisions of the Domestic Violence Act, 2005, which is already decided on 1st July, 2015. According to the applicant, she has moved the present application seeking transfer of the proceedings being Case No.A-505 of 2013, under section 13 of the Hindu Marriage Act for divorce, pending on the file of the Family Court, Aurangabad to the Court of Civil Judge Senior Division, Jalgaon.

4. Mr Suryawanshi, learned Counsel appearing on behalf of the applicant has made two-fold submissions, (i) that the son of the applicant,

who is aged about six years, is also the applicant in one of the proceedings. Though proceedings are initiated prior in point of time by the wife as that of the one initiated by husband, the proceedings at Aurangabad be transferred to Jalgaon, as it will be difficult for her to travel all the way, along with minor son, to attend the proceedings at Aurangabad. Apart therefrom, Mr Suryawanshi would urge that since the applicant-wife is also required to look after child Rajvardhan, who is six years of age, the said aspect is required to be taken into account as causing additional hardship to her, in case the proceedings pending at Aurangabad are not transferred.

5. While countering the above referred submissions, Mr Surve, learned Counsel appearing on behalf of the respondent would urge that the present application, seeking transfer of proceedings, is preferred by the applicant-wife only with an intention to misuse her said position. According to him, the proceedings initiated at Jalgaon pertain to maintenance only, as is apparent from the pleadings raised therein. Mr Surve would urge that the proceedings under the Domestic Violence Act, initiated at Jalgaon, are already decided by the Court of Judicial Magistrate First Class by judgment dated 1st July, 2015, whereby maintenance has been awarded to the applicant, and according to him, since the applicant would get appropriate maintenance, she would not suffer monetary loss if she travel and attend the proceedings at

Aurangabad. Apart therefrom, Mr Surve would urge that the respondent herein has met with an accident and has incurred disability. It is apparent from the certificate placed on record that the Doctors have advised him not to undertake long journey or to stand for longer time. In addition to above, he would urge that it would reveal from exchange of notices, that it is a case of abandonment of the company by the wife and as such, wife is not entitled to take benefit of her own wrongs. According to Mr Surve, the law on the aspect of transfer of proceedings is also required to be considered and as such, he has placed reliance upon the judgment of the Apex Court in the matter of **Kuldinder Kaur @ Kulwinder Gurucharan Singh vs. Kandi Friends Education Trust & ors.**, reported in **2008 (1) ALL MR 914** and the judgment of this Court in the matter of **Smt. Rekha wd/o. Late Avinash Raut vs. Shivaji Bhimrao Sapate**, reported in **2011 (3) ALL MR 279**, so as to canvass that the proceedings at the behest of the wife, who is required to look after the children, are not required to be transferred just because the wife and children will face hardship. He, thus, prayed for dismissal of the application.

6. In the light of submissions made on behalf of the respective parties, I have bestowed my anxious consideration to the submissions made and it is noted that, it is not in dispute that the marriage took place in 2003, birth of a son in 2007, custody of the son with the present applicant, initiation of the proceedings by the wife at Jalgaon and one proceedings by

husband at Aurangabad. The only point that needs to be considered by this Court is, whether a case for ordering transfer of proceedings from Aurangabad to Jalgaon, is made out or not.

7. With a view to substantiate the issue of hardship and pendency of the other proceedings, Mr Suryawanshi has invited my attention to the fact as regards pendency of proceedings at Jalgaon, which are defended by the respondent herein and the additional fact that one of the proceedings is already decided at Jalgaon. It is required to be noted that the custody of the minor child Rajvardhan, aged six years, is with the applicant and she is required to look after him. Apart therefrom, if the hardship suffered by the respondent is to be considered, Mr Surve has placed on record documentary evidence so as to substantiate the disability caused in an accident by the respondent. The degree of disability as certified by the Doctor, while advising him not to undertake journey, appears to be to the extent of 50%. Apart therefrom, a judicial note can be taken of the fact that the respondent has already appeared in various proceedings at Jalgaon and at no point of time has come out with a case for transfer of the proceedings either from Jalgaon to Aurangabad or to any other convenient place, so as to take care of his physical disability.

8. Apart from above, it is also required to be noted that since the son is in the custody of the applicant, the respondent, at no point of time, has

disputed the same or has moved any proceedings for custody of the said child.

9. The law on the aspect of transfer of matrimonial proceedings can conveniently be looked into and appreciated in the light of the judgment rendered by this Court in the matter of **Sangamitra w/o Ramakant Royalwar vs. Ramakant s/o Gangaram Royalwar**, reported in **2008 (6) ALL MR 1**. In the said judgment, this Court had an occasion to exhaustively deal with the law relating to transfer of matrimonial proceedings at the behest of the wife and while considering the same, this Court, in paragraphs 17 and 18 of the said judgment, has observed thus :-

“17. In these cases wives are residing within territories of judicial districts assigned to this Bench and their proved situation in life constrains them to apply for transfer of matrimonial proceedings filed against them by their respective husbands. Their plight and sufferings are germane & hence, their ordinary residence with parents gives them a cause & reason to seek the order of transfers from this Bench. It forms a part of cause of action to seek such relief. In the circumstances, I find that the present Misc. Civil Applications also arise in judicial districts specified in Rule 1 of Chapter XXXI of the Bombay High Court Appellate Side Rules, 1960 and hence this Bench has got jurisdiction and competence to take cognizance thereof. One more facet of the matter needs to be looked into. The same type of argument can be advanced by any side by pointing out that the High Court Bench relevant for

judicial district in terms of chapter XXXI of Appellate Side Rules & in which the non-applicant husbands want proceedings to be continued, cannot direct the subordinate courts located in judicial districts outside their specified area to take cognizance of matrimonial proceeding transferred to them by it. Thus the objection of the non-applicants are therefore totally misconceived.

18. The facts leading to request for transfer are already stated above, I find those facts sufficient to hold that the applications arise in judicial districts mentioned in Rule 1 of Chapter XXXI of the Appellate Side Rules & to order the transfer. Accordingly all the 3 Misc. Civil Applications are allowed. The request for transfer of respective proceedings therein, are granted and the matters are transferred to the Courts as prayed for. However, in the circumstances of the case, there shall be no order as to costs.”

10. Apart from above, this Court is alive to the fact as regards considerations which should weigh while ordering transfer of proceedings. The factual considerations before this Court, which in my opinion, mandate transfer of the proceedings from Aurangabad to Jalgaon as the minor son in custody of the applicant is residing with her at Jalgaon and the three proceedings which were initiated, are either dealt with or decided at Jalgaon itself, which were not objected on behalf of the respondent, on the ground of his physical disability.

11. So far as reliance placed by the learned Counsel appearing on behalf of the respondent, on the judgment of the Apex Court in the matter of Kulwinder Kaur (cited supra) is concerned, in the said matter the claim for transfer as was sought under sections 24 and 25 of the Code of Civil Procedure was not out of the matrimonial proceedings but out of service/contractual matters. Apart therefrom, the judgment relied upon on behalf of the applicant, in the matter of Smt. Rekha wd/o. Late Avinash Raut (cited supra), was arising out of a suit for recovery and not out of matrimonial proceedings.

12. The Apex Court, in the matter of transfer of matrimonial proceedings has already mandated that the consideration as regards likely hardship of the wife is to be taken into account.

13. In view of above, in my opinion, it will be appropriate to order transfer of proceedings. Thus, the Misc. Civil Application stands allowed in terms of prayer clause (b), which reads thus :-

“By appropriate order transfer Case No.A-505/2013 pending in the Court of learned Family Judge, Aurangabad to learned Civil Judge, Senior Division, Jalgaon and for that purpose issue necessary orders. “

14. At this stage, Mr Surve, learned Counsel appearing on behalf of the respondent, makes a request that in view of the above order, since all the three proceedings will be pending at Jalgaon, it will be appropriate to tag them and be heard by one Court. Learned Counsel appearing on behalf of the applicant has consented for the said request made on behalf of the respondent.

15. In view thereof, the Principal District Judge, Jalgaon, is directed to pass appropriate orders for clubbing and assigning all the three matters, namely, Criminal Misc. Application No.527 of 2013, Special Civil Suit No.414 of 2013 and Case No.A-505/2013, to one Court.

16. With the above observations, Misc. Civil Application stands allowed with no order as to costs.

(N.W. SAMBRE, J.)

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