

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

MISC.CIVIL APPLICATION NO. 40 OF 2013

VANDANA RAJESH KESARKAR
VERSUS
RAJESH KRISHNASWAMI KESARKAR

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Advocate for Applicants : Shri P.V. Barde
Advocate for Respondents : Shri N.B.Patil Raiwadikar

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CORAM : RAVINDRA V. GHUGE, J.
Dated: April 16, 2015

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PER COURT :-

1. I have heard Shri Barde and Shri Patil, learned Advocates for the respective sides.
2. By this application, filed under Section 24 of the Civil Procedure Code, the applicant / wife prays for transfer of proceedings in HMP No.147 of 2012 from the Court of the learned Civil Judge S.D., Kalyan, District Thane to the competent Civil Court at Ahmednagar.
3. It is submitted that a Criminal Enquiry Application No.937 of 2012 is already pending before the learned Chief Judicial Magistrate Ahmednagar under the Domestic Violence Act. The respondent / husband attends the proceedings at Ahmednagar.
4. The applicant, being a lady, finds it difficult to travel a distance of 300 kms. from Ahmednagar to Kalyan. Being a lady, she has to be

accompanied by a family member since a visit to Kalyan cannot be completed during the day time. She does not have an independent source of income and is surviving with the assistance of her parents.

5. Shri Barde, learned Advocate relies upon the judgment of the Apex Court in the case of Sumita Singh Vs. Kumar Sanjay and another [AIR 2002 SC 396] and the two judgments delivered by this Court in the matters of Sau. Kalpna Pankaj Rozatkar Vs. Pankaj Supadu Rozatkar [2013 (6) ALL MR 345] and Dr. Sau. Nilima Mahesh Muley Vs. Mahesh Madhavrao Muley [2013 (1) ALL MR 398].

6. Shri Patil, learned Advocate has opposed the application. He submits that the respondent is a poverty stricken person. He can barely feed himself. It would be difficult for him to participate in HMP No.147 of 2012, if it is transferred to Ahmednagar. The applicant wife is better placed and can visit Kalyan only when her appearance is required.

7. The Apex Court in the case of Sumita Singh (supra), has concluded in paragraph Nos.1 to 4 as under:-

“2. Learned counsel for the husband states that the wife is an educated woman who is doing very well and can, therefore, travel to Ara while the husband is unemployed.

3. It is the husband's suit against the wife. It is the wife's convenience that, therefore, must be looked at, The circumstances indicated above are sufficient to make the transfer petition

absolute.

4. Accordingly, Matrimonial Case No. 30 of 2000 pending before the VIth Additional District and Sessions Judge, Ara, Bhojpur, Bihar shall stand transferred to the District Judge, Delhi, who shall hear it himself or assign it for hearing to an appropriate forum.“

8. This Court, in the case of Kalpana (supra), has observed in paragraph Nos. 3 to 6 as under:-

“ 3. The learned Counsel appearing for the applicant submits that, the distance between Jalgaon to Kalyan is more than 400 Kms. and therefore, it is inconvenient for the applicant- wife to travel from Jalgaon to Kalyan to attend the proceedings instituted by the respondent- husband. It is submitted that, Special Civil Suit No. 208 of 2011 is filed by the respondent-husband before the Civil Court at Jalgaon for compensation against the applicant, which is pending. It is submitted that, other two proceedings instituted by the applicant, (1) under Protection of Women from Domestic Violence Act and (2) H.M.P. No.107 of 2011 for Restitution of Conjugal Rights, are pending before the Court at Jalgaon. In addition to this, it is submitted that, four years son is residing with the applicant. Therefore, the learned Counsel appearing for the applicant submits that, Civil Revision Application deserves to be allowed.

4. On the other hand, the learned Counsel appearing for the respondent submits that, the respondent is working as Teacher and therefore, it is difficult for him to travel from Kalyan to Jalgaon. It is submitted that, applicant-wife has instituted criminal complaint against the respondent and his family members invoking provisions of Section 498-A of the Indian Penal Code.

5. *I have heard the learned Counsel appearing for the parties. There is no dispute that, distance between Kalyan to Jalgaon is more than 400 Kms. Apart from the distance, four years child is with the applicant. The applicant has to look after that child and therefore, if the balance of convenience is weighed, certainly it lies in favour of the applicant. Apart from what is observed herein above, other three proceedings are pending at Jalgaon, out of which, one at the instance of the respondent being Special Civil Suit No. 208 of 2011 for compensation against the applicant.*

6. *In that view of the matter and in view of the authoritative pronouncement of the Supreme Court in the case of Sumita Singh vs. Kumar Sanjay reported in (2001) 10 S.C.C. 41, wherein the Supreme Court held that, in a proceedings instituted by the husband, convenience of the wife should be looked at, this Misc. Civil Application deserves to be allowed. Hence, following order;-*

(1) *The Misc. Civil Application is allowed to the extent of transfer of Hindu Marriage Petition No. 161 of 2007 pending in the Court of Civil Judge, Senior Division, Kalyan to the Court of Civil Judge, Senior Division, Jalgaon.*

(2) *The concerned Court at Kalyan to take steps to transfer the said proceedings within one week from receipt of the copy of this order.*

(3) *On transfer of the said proceedings, the Civil Judge, Senior Division, Jalgaon should make attempt to dispose of the same, as expeditiously as possible, however, within one year from today.*

(4) *The concerned Court should not grant unnecessary adjournments to the parties unless there exist extraordinary*

reason for the same.

(5) It is made clear that, so far proceedings which are pending before the Judicial Magistrate, First Class, Kalyan, this Court has not passed any order and it is left open to the applicant to take appropriate proceedings before the appropriate forum if the applicant is advised.

(6) Misc. Civil Application is allowed to the above extent and same stands disposed of. Rule made absolute on above terms."

9. This Court, in the matter of Dr.Sau.Neelima (supra), has considered a similar issue as is seen from it's observations in paragraph Nos. 7 to 9, which read as under:-

"7. I have given due consideration to the rival submissions. It is not in dispute that, the parents of the applicant are staying at Amravati. It is also not in dispute that, the complaint is filed by the applicant under the provisions of Protection of Women's from Domestic Violence Act, 2005 and also one more proceeding is initiated at Amravati. The averments in the application that, threats are extended to the father of the applicant by unidentified person at the instance 10 mca12.12 of the respondent, is not specifically denied by the respondent in specific words in his reply. The contention of the respondent that, the marriage is not solemnized at Amravati and also other events are not taken place at Amravati and therefore, there is no question of transfer of the proceedings from Ahmednagar to Amravati, is devoid of any merits.

8. *The applicant has denied that, she is in service at Mumbai on regular basis, as Medical Practitioner. Even if the contention of the*

respondent is accepted that, the applicant has treated one patient on 14th July, 2012 at Mumbai, that is no ground to reach to the conclusion that, she is permanently residing at Mumbai. Therefore, at the cost of repetition, it has to be observed that, the parents of the applicant are staying at Amravati and as stated by the applicant, she needs moral support of her parents in the matrimonial dispute and therefore, trial should be at Amravati. It is true that, the Court has to 11 mca12.12 exercise discretion judiciously looking into the facts involved in the matter. In the facts of this case, it is not in dispute that, the distance from Amravati to Ahmednagar is around 500 Kms. It is also not in dispute that, the parents of applicant are staying at Amravati.

9. *The Hon'ble Supreme Court in the case of Sumita Singh vs. Kumar Sanjay reported in (2001) 10 S.C.C. 41, has taken a view that, in a matrimonial proceedings filed by the husband, the convenience of the wife should be looked at."*

10. It is apparent that in between the wife and the husband, a lady litigant is bound to find it more difficult and cumbersome to travel long distances for attending Court proceedings. So also, in the instant case, the respondent is required to travel from Kalyan to Aurangabad in Criminal Enquiry Application No.937 of 2012.

11. Considering the law as is laid down by the Apex Court and followed by this Court in the above cited judgments, by transferring HMP No.147 of 2012 from Kalyan to Ahmednagar and facilitating a hearing in both the proceedings on the same date at Ahmednagar, would meet the ends of justice. The respondent should have no difficulty in attending both the

proceedings on the same date at Ahmednagar.

12. In the light of the above, this Civil Application is allowed. HMP No.147 of 2012 be transferred from the files of the learned Civil Judge S.D., Kalyan to the competent Civil Court at Ahmednagar. Both the proceedings i.e. HMP No.147 of 2012 and Criminal Enquiry Application No. 937 of 2012 shall be posted before the respective Courts on the same day. The litigating sides shall bring this order to the notice of both the learned Courts so as to have a common date of hearing.

13. I find it appropriate to permit both the sides to have the matter referred to a Mediator at Ahmednagar so as to explore the possibility of a resolution to the marital discord.

(RAVINDRA V. GHUGE, J.)

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