

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.734 OF 2014

AND

WRIT PETITION NO.145 OF 2015

WRIT PETITION NO.734 OF 2014

Mrs. Vina Dattaram Patkar

alias Ms. Vina Vaman Ghode

.... Petitioner

V/s

Mr. Dattaram Jaya Vilas Patkar

alias Mr. Dajvip Patkar

.... Respondent

Mr. M.S. Khandeparkar, Advocate for the Petitioner.

Mr. S.D. Lotlikar, Senior Advocate with Mr. P.S. Lotlikar,
Advocate for the Respondent.

AND

WRIT PETITION NO.145 OF 2015

Mr. Dattaram Jaya Vilas Patkar

alias Mr. Dajvip Patkar

.... Petitioner

V/s

Mrs. Vina Dattaram Patkar

alias Ms. Vina Vaman Ghode

.... Respondent

Mr. S.D. Lotlikar, Senior Advocate with Mr. P.S. Lotlikar,
Advocate for the Petitioner.

Mr. M.S. Khandeparkar, Advocate for the Respondent.

CORAM : N.M. JAMDAR, J.

DATE : 26 FEBRUARY 2015

ORAL ORDER :

Both the petitions arise from matrimonial proceedings. The petitioner in Writ Petition No.734/2014 is the wife who has instituted the petition for divorce in the Court at Vasco. Petitioner in Writ Petition No.145/2015 is the husband who has instituted petition for divorce in the Court at Mapusa.

2. Writ Petition No.734/2014 is filed by the wife seeking an order to transfer the proceedings filed by the husband in the Court at Mapusa to Vasco and to club and consolidate both the proceedings to be disposed of at Vasco. During the hearing of the Writ Petition No.734/2014, it was pointed out by the Mr. S.D. Lotlikar, the learned Senior Counsel for the respondent-husband that the husband had filed an application for return of the petition filed by the wife at Vasco on the ground that Court at Vasco does not have territorial jurisdiction. The learned Civil Judge at Vasco was directed to decide the application. By order dated 21 February 2015, the learned Civil Judge at Vasco decided the application and rejected the application, holding that the petition at Vasco was correctly filed by the wife. It was held that as per Article 5 of the Law of Divorce under Portuguese Civil Code, where the plaintiff resides can be the cause of action and even though Civil Procedure Code is made applicable to the State of Goa this provision being substantive provision, it is saved. Against this decision the husband has filed Writ Petition No.145/2015.

3. Both the petitions were taken up together for argument. The matters arise from matrimonial proceedings. Both the parties have filed petitions for divorce. They have a son aged four and half years. The resolution of legal issue sought to be raised by the Counsel would require detailed consideration, consequence of which both the matrimonial proceedings will not proceed further and the state of flux will continue as there is already an interim order operating in the petitions. Considering this position and various rival contentions regarding territorial jurisdiction and objection of the wife to the proceedings being conducted at Mapusa, it was put to the learned Counsel if parties are agreeable to transfer both the proceedings to a third Court. The wife has invoked the power of transfer vested of this Court. Section 24 of the Civil Procedure Code permits this Court to even suo motu transfer any proceedings pending before the subordinate Courts, if the circumstances so warrant.

4. Both the Counsel stated that they have no objection to the case being transferred to third Court and they gave suggestions regarding the third Court. Mr. Lotlikar submitted that the matters can be transferred to the Court at Panaji. Mr. Khandeparkar submitted that third Court should be Court at Margao. Mr. Lotlikar submitted that Court in Panaji would be preferable since the husband is a practicing advocate and it is not possible for him to attend different Courts, while on the other hand Mr. Khandeparkar submitted that the wife does not have financial resource to attend Court at Panaji, as transport to the Court at Margao is better.

5. Having considered the facts and circumstances as narrated above, I am of the opinion that this is a fit case where power under Section 24 of the Civil Procedure Code should be invoked to transfer both the petitions to the third Court. It cannot be overlooked that the husband is practicing advocate who also is representing cause of other litigants and therefore driving him to attend his own personal matters to some other city will affect his duties towards his client. As regard the inconvenience to the wife is concerned it is primarily a financial difficulty. The financial difficulty of the wife can be resolved by directing the husband to pay an allowance to the wife of each date of hearing in the proceedings. This, to my mind, will adequately balance the equities of the matter. This amount of allowance is only in view of the financial difficulty faced by the wife to attend the Court at Panaji and shall not affect her contentions regarding the right of maintenance. It is made clear that there shall not be any default in respect of payment of this allowance, as it is one of the primary ingredients for passing this order based on equity. In view of this position the legal arguments regarding the applicability of Civil Procedure Code are not decided and the legal position will be tested in appropriate proceedings.

6. Accordingly, both the petitions are disposed of as under:

- (i) The proceedings in Matrimonial Petition No.111/2014/B pending in the Court of Senior Civil Judge, Mapsua and the Matrimonial Petition No.57/2014/B pending

in the Court of Civil Judge, Senior Division, Vasco shall stand transferred to the Court of Civil Judge, Senior Division at Panaji. They shall be clubbed and disposed of by the Court of Civil Judge, Senior Division at Panaji. Registry to take appropriate action in that regard.

(ii) The husband shall pay an amount of Rs.1,000/- to the wife as an allowance for each date of hearing. The amount shall be paid in advance.

7. Both the petitions stand disposed of in above terms.

N.M. JAMDAR, J.

NH/-