

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

MISCELLANEOUS CIVIL APPLICATION NO.166 OF 2014

SOU.RUPALI ANIL PATIL

)...APPLICANT

V/s.

SHRI ANIL TUKARAM PATIL

)...RESPONDENT

Mr.B.A.Lawate, Advocate for the Applicant.

Mr.Laxman P. Kamal, Advocate for the Respondent.

Coram: Smt.R.PSondurBaldota, J.

Date : 21st January, 2015.

P.C. :

1 This application is filed by the wife under Section 24 of Code of Civil Procedure (CPC) for transfer of Petition-A No.51 of 2014 filed by the respondent husband in the Family court at Kolhapur to the Family court at Mumbai. The parties were married on 9th May, 1999. After the marriage, they cohabited at Kolhapur. They have two children born from the marriage –

daughter aged 12 years and son aged 10 years. Both the children are residing with the respondent. There is no dispute that the son suffers from epilepsy and needs regular attention.

2 It is also an admitted position that at the time of marriage, the applicant had studied only upto 12th standard. Thereafter, she continued the education. She has obtained Diploma in Electrical Engineering and also Bachelor of Arts. In the year 2013, she cleared the Maharashtra Public Service Commission (M.P.S.C.) examination and is selected as a Sales Tax Inspector. She was to resume duty at Mumbai as Sales Tax Inspector on 18th December, 2013. She left the matrimonial on 7th December, 2013 house to come to Mumbai and has been residing with a relative in Mumbai and attending to her job as a Sales Tax Inspector. Since then she has not returned home. The petition for divorce was filed by the respondent on 14th August, 2014. The applicant has filed her written statement and presently the petition is posted for framing of issues.

3 In the application, the applicant states that the probation period for her job is of two years and it is difficult for her to take leave during the probation period. She apprehends that if she takes leave often, she may not be continued in the service. She also finds it inconvenient to travel alone the distance of 400 kms. from Mumbai to Kolhapur. The applicant alleges that as against her situation, the respondent is well off. He is a businessman settled at Kolhapur and dealer of Kirloskar Oil Engine Spares Parts for three districts, namely, Kolhapur, Sangli and Satara. He has vehicles available for travel. He has servants working at home and people working with him in the office to assist him in his business. Therefore, it would more convenient, if the respondent has to travel the distance from Kolhapur to Mumbai.

4 Mr.Lawate, the learned advocate for the applicant, submits that, the convenience of the wife should be the prime consideration for deciding the applications for transfer of matrimonial proceedings. In this connection, he relies upon the

decision of the Apex court in Smt.T.Gayatri Devi vs. Dr.Tallepaneni Sreekanth reported in 2013(5) ALL MR 918 (S.C.). The observations of the Apex court at paragraph 4 of the judgment relied upon by Mr. Lawate reads as follows :

“4. We find the approach of the High Court and the reasons assigned clearly unsustainable as the High Court appears to have lost sight of the fact that the respondent-husband on the one hand has filed a divorce proceeding against the appellant-wife and further expects the same to be tried at a place of his choice, which is Hyderabad. The High Court refused to transfer it to the place where the wife is working on the ground that the petitioner-wife is not an indigent lady and she is capable of contesting the suit by undertaking journey from Kakinada to Hyderabad. The learned Single Judge has completely overlooked the implication of this view as on the one hand the appellant-wife would be expected to contest the divorce proceeding to her detriment and at the same time would

have to undertake the journey from Kakinada to Hyderabad which is bound to affect discharge of her professional duties where she is working as apart from the journey she would also have to seek leave which surely would affect her performance in the company further and put her job at risk. The import of the order clearly is that on the one hand the appellant-wife should live alone, maintain herself by living at her parents place and on the top of it give more attention to contest the divorce proceeding rather than looking to her job on which she is surviving in absence of any support from her husband who not only seeks a decree of divorce but also at convenience by choosing a place of his choice to secure a decree of divorce.”

He submits that, in view of the above observations of the Apex court, the application for transfer should be allowed by this court.

5 Mr.Kamal, the learned advocate for the respondent, on the other hand, submits that, in the facts of the present case, it

would be extremely inconvenient for the respondent if the proceedings are transferred to Mumbai. He points out that since 7th December, 2013, when the applicant left the matrimonial home, he has been single handedly looking after both the children, including taking care of the health of the son. He cannot leave the children, particularly, the son, who is suffering from epilepsy. He also points out that the claim of the applicant that she cannot take leave being still on probation, is without any merit. The respondent has received information by resorting to Right to Information Act about leave available to the applicant and the leave enjoyed by her so far. As per the information, the applicant is entitled for leave of 116 days during the probation period, and she has, so far, enjoyed leave of only 30 days. This would mean that, there is sufficient leave available to the credit of the applicant.

6 Undoubtedly, as has been observed by the Hon'ble Apex Court, ordinarily the convenience of the wife should have precedence in deciding the applications of transfer. But that

cannot be a thumb-rule. There cannot be a straight-jacket formula for deciding such application. It has to be decided in the facts and circumstances of each case.

7 The facts of the present case are unusual. The applicant has left behind two children for the respondent to look after. One of them suffers from epilepsy and needs regular attendance. It would be extremely inconvenient for the respondent to leave him without personal attendance.

8 As regards the travel to be undertaken from Mumbai to Kolhapur, undisputedly, there are various types of conveyances available for the same. The applicant being a working woman can take up the travel. Besides, the statements made in the application are seen to be misleading. There is also suppression of material facts therein.

9 In the above facts and circumstances, the application is dismissed.

(Smt.R.P. SondurBaldota, J.)