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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
MISC. CIVIL APPLICATION NO. 191 OF 2014

Sachin Ramesh Mhatre

.....Applicant

V/s.

Aditi Sachin Mhatre

.....Respondent

* * * * *

Mr. Uday Warunjikar a/w. Mr. Ratnesh Dube

i/by. Rutuja Ambekar, Advocate for the applicant.

Mr. R.T. Lalwani, i/by. Mr. Prakash Mahadik,

Advocate for the respondent.

CORAM :- SMT. R.P. SONDURBALDOTA, J.

DATED :- 14th JANUARY, 2015.

P.C. :-

1). This application filed under Section 24 Civil Procedure Code is for, transfer of the matrimonial petition from the Court where it is pending to any other Court in the Family Court at Bombay. The applicant is the husband who has filed

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petition for divorce being M.J. Petition No. 94 of 2010. The parties to the petition were married on 25th February, 2007. From the wedlock, a son named Atharva was born on 6th May, 2009. His custody is with the respondent, wife. By the orders passed in the petition, access has been provided to the applicant.

2). The transfer sought is on the apprehension that, the applicant may not get justice from the Court, where the same is presently pending. The respondent opposes the application contending that, it is nothing but yet another attempt on the part of the applicant in delaying the trial in the matrimonial petition, the hearing of which is expedited. The current status of the trial is that, it is pending for cross-examination of the applicant since the month of March, 2014. There have been eleven dates since then till date.

3). Mr. Warunjikar, the learned Advocate appearing for the applicant, began his submissions by saying that, the applicant is not making any allegations of bias against the learned Judge before whom the petition is pending. However, according to him the manner in which the proceedings are conducted by the learned

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Judge has created apprehension in the mind of the applicant that, he may not get justice if the proceedings are conducted before the Judge. He also submits that, the instances referred to by the applicant in his application, if considered independently, may not appear serious enough but if considered in totality, would justify the apprehension felt by him.

4). The submission of Mr. Warunjikar, that the applicant does not allege bias on the part of the learned Judge, as pointed out by Mr. Lalwani, the learned Advocate appearing for the respondent, is not borne out by the application. At several places in the application, the applicant has in no uncertain terms, alleged bias on the part of the learned Judge. Mr. Lalwani, has in fact taken exception to the language in which the allegations are made. The instances of the allegations made in the application read as follows :-

“The Hon’ble Principle Judge was upset by the fact that the applicant has challenged her order before the High Court and it was evident from her behavior towards the applicant before the Court as the Principle Judge would shout at him, scold him on all subsequent dates.”

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“The Hon’ble Principle Judge started showing bias in favour of the respondent and accommodated respondent and her advocate but was very strict with the applicant.”

“She more than often acted in an unjust manner with the applicant”.

“The callous attitude of the Hon’ble Principal Judge towards him has made him unsure of approach of the Hon’ble Judge towards the entire matter.”

The Hon’ble Judge demonstrated her favouritism towards the respondent more so from 8.8.2014 which has alarmed the applicant.”

“Though the applicant, on 6.9.2014 had filed an application for adjournment stating that he wants to seek transfer of the matter the learned Judge, passed order upon the interim application dated 27.8.2014 filed by the respondent.”

“Such high handed and obvious biased approach of the Hon’ble Judge has cause serious apprehension in the mind of the applicant about the welfare and interest of the minor son.

5). Mr. Warunjikar, submits that though the matrimonial petition is pending for trial and the applicant has to avail himself for cross-examination, he was constrained to file several applications relating to the access to the child. It is his allegation that the learned Judge has passed an order directing the parties

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not to file applications for interim reliefs and to complete the trial in the petition. Despite such an order, when the respondent filed interim applications at Exh-24, 25 and 26, the same were entertained by the Court, whereas, the applications filed by the applicant at Exh-105, 109, 114, 118, 120 and 133 etc. are kept pending. The record of the proceedings however shows otherwise. There is no order by the learned Judge restraining the parties to file interim applications. What is observed by the learned Judge in the order dated 8th August, 2014 is that “Ideally no interim application should be made by either party unless extremely urgent and necessary.” Nonetheless, the applicant has filed five applications before the Family Court. The applicant has, in addition, filed four Civil Applications before this Court after 14th March, 2014 being C.As. No. 2259/2014, 2012/2014, 3692/2014, 1814/2014 relating to access to the child.

6). Out of the three applications filed by the respondent, Exhibit-25 is for seeking permanent alimony, Exhibit-26 is for framing of additional issues and Exhibit-24 is for interim maintenance. The learned Judge has decided only the application

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at Exhibit-26 and framed additional issues. No complaint can be made by the applicant about hearing of Exhibit-26. The application for grant of permanent alimony must necessarily be decided at the stage of final hearing of the petition and by making an endorsement on the application at Exhibit-24 the respondent has agreed for, deferring of the interim application to the final hearing of the petition. In my opinion, the three applications could not have been dealt with in any other way.

7). As against this, the applications filed by the applicant are for grant of access to the child on different occasions, direction for psychological counseling of the child, increase in frequency of access, appointment of Court Commissioner for handing over of the child for access and for sending the child for extra-curricular activities etc. The nature and the number of the applications filed by the applicant create an impression that, the focus of the applicant is on the interim applications, rather than on the final hearing of his petition by making himself available for cross-examination. Besides, it is not as if, none of the interim

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applications of the applicant are heard. Some are heard and decided.

8). Mr. Warunjikar next complains about, two orders passed by the learned Judge on the applications for adjournment made by the applicant. While granting the adjournments, the learned Judge had imposed costs quantified at Rs.5,000/- and Rs.10,000/- respectively. He submits that on the first occasion i.e. on 27th August, 2014, the applicant was in fact before this court in Civil Application No.2012 of 2014 in Writ Petition No.3692 of 2014. Despite being informed that the applicant has to remain present before this court, the learned Judge had imposed costs upon the applicant while granting the adjournment. On the second occasion, i.e. on 10th November, 2014, he had to appear before the Judicial Magistrate, First Class, Thane for framing of charge in Regular Criminal Case No. 809 of 2012 filed at the instance of the respondent. Mr. Warunjikar submits that, absence of the applicant on both the dates, was completely justified and therefore there could be no costs imposed.

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9). On the first occasion i.e. on 27th August, 2014, the applicant had made a written application for adjournment stating that he was required to remain present in this court at 3.00 p.m. in connection with civil application filed by him in Writ Petition No.3692 of 2014. The respondent opposed the application by endorsing her say on the application. She complained that, the applicant was infact present in the Court at around 1.00 pm. and when the Advocate for the respondent had enquired with the Advocate for applicant about the cross-examination, the Advocate had informed that cross-examination of the applicant would proceed on that day. The learned Judge noted that though the applicant was present in the Court till 1.15 p.m., he had not shown simple courtesy of intimating the Advocate for the respondent or the respondent that he would be taking a date. After considering the fact of number of adjournments taken in the past, the learned Judge imposed costs quantified at Rs.5,000/- upon the applicant. Mr. Lalwani, submits that the date of 27th August, 2014 in this court had been taken by the applicant himself by mentioning the matter on 25th August, 2014 and that had the applicant been serious about proceeding with the trial, he would have sought a

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different date in this Court. That may not always be possible. Similar was the situation in respect of the attendance of the applicant on 10th November, 2014. Mr. Lalwani argues that in circumstances of the case, where the cross-examination of the applicant has been pending since 14th March, 2014 and several dates have been taken by the applicant resulting into delay in the cross-examination, the applicant cannot be allowed to complain about imposition of costs for the adjournments granted. He also submits that, the applicant is a man of substance and can very well afford a battery of lawyers to represent him in proceedings in various Courts.

10). Next, Mr. Warunjikar complains about, rejection by the learned Judge of the application for appointment of Commissioner for handing over of six years old child at the time of access. This application was moved on account of the Undertaking filed by the respondent in the year 2012, when the child was barely 3 years old. The Undertaking contained a statement that, if the child was not willing to go over to the father for access, the applicant could take away the child by force. Mr. Lalwani submits

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that, the Undertaking in such unusual terms was given by the respondent out of sheer frustration. The respondent was unable to bear the scenes at the time of access, when the three year old child did not want to leave her. It is alleged that, the applicant would record such events by video camera, which made the child uncomfortable. The learned Judge rejected the application holding that, there was no requirement to add a third party such as a Court Commissioner to supervise smooth handing over of the child on each day of the access. In her opinion, it would only create further complications.

11). Mr. Warunjikar argues that, assurance of fair trial is the basic requirement of dispensation of justice. Therefore, the consideration to weigh with this Court for deciding the application for transfer should be, not the truth or correctness of the allegations made for seeking transfer, but to find out whether the allegations would create reasonable apprehension in the mind of the applicant that he might not get justice in the Court in which the proceedings are pending. He seeks support from the following decisions :-

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- 1). **Kulwinder Kaur @ Kulwinder Gurcharan Singh Vs. Kandi Friends Education Trust and Ors., reported in AIR 2008 SC page 1333.**
- 2). **Julie Jayesh Shah Vs. Jayesh Trilok Kumar Shah, reported in 2013 (1) ALL M.R. page 570.**
- 3). **Govind Sharan Aggarwal Versus. Pt. Hardeo Sharma Trivedi, reported in (1983) 2 Supreme Court Cases page 268.**
- 4). **Satish Jaggi Versus. State of Chattisgarh and Others, reported in (2007) 3 Supreme Court Cases page 62.**
- 5). **Shehnaz Mudbhatkal Versus. Arvind Ramakrishna and Another, reported in (1998) 5 Supreme Court Cases page 596.**

12). In ***Kulwinder Kaur's*** case (supra), the Apex Court while considering an appeal against the order refusing transfer, made following observations on the power to transfer proceedings and manner in which the power is to be exercised.

“14. Although the discretionary power of transfer of cases cannot be imprisoned within a strait-jacket of any cast-iron formula unanimously applicable to all situations, it cannot be gainsaid that the power to transfer a case must be exercised with due care, caution and circumspection. Reading Sections 24 and 25 of the Code together and keeping in view various judicial pronouncements, certain broad propositions as to what may constitute a ground for transfer have been laid down by Courts. They are balance of convenience or inconvenience to plaintiff or defendant or witnesses; convenience or inconvenience of a particular place of

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trial having regard to the nature of evidence on the points involved in the suit; issues raised by the parties; reasonable apprehension in the mind of the litigant that he might not get justice in the court in which the suit is pending; important questions of law involved or a considerable section of public interested in the litigation; 'interest of justice' demanding for transfer of suit, appeal or other proceeding, etc. Above are some of the instances which are germane in considering the question of transfer of a suit, appeal or other proceeding. They are, however, illustrative in nature and by no means be treated as exhaustive. If on the above or other relevant considerations, the Court feels that the plaintiff or the defendant is not likely to have a 'fair trial' in the Court from which he seeks to transfer a case, it is not only the **power**, but the **duty** of the Court to make such order."

15. [In Maneka Sanjay Gandhi v. Rani Jethmalani,](#) MANU/SC/0134/1978, 1979CriLJ458, this Court stated;

Assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party or easy availability of legal services or like mini grievances. Something more substantial, more compelling, more imperiling, from the point of view of public justice and its attendant environment, is necessitous if the Court is to exercise its power of transfer. **This is the cardinal principle although the circumstances may be myriad and vary from case to case.** (emphasis supplied)

16.The cardinal principle for the exercise of power under this section is that the ends of justice demand the transfer of the suit, appeal or other proceeding. The question of expediency would depend on the facts and

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circumstances of each case but the paramount consideration for the exercise of power must be to meet the ends of justice. It is true that if more than one court has jurisdiction under the Code to try the suit, the plaintiff as *dominus litis* has a right to choose the Court and the defendant cannot demand that the suit be tried in any particular court convenient to him. The mere convenience of the parties or any one of them may not be enough for the exercise of power but it must also be shown that trial in the chosen forum will result in denial of justice. Cases are not unknown where a party seeking justice chooses a forum most inconvenient to the adversary with a view to depriving that party of a fair trial. The Parliament has therefore, invested this Court with the discretion to transfer the case from one Court to another if that is considered expedient to meet the ends of justice. Words of wide amplitude- for the ends of justice-have been advisedly used to leave the matter to the discretion of the apex court as it is not possible to conceive of all situations requiring or justifying the exercise of power. But **the paramount consideration must be to see that justice according to law is done; if for achieving that objective the transfer of the case is imperative, there should be no hesitation to transfer the case even if it is likely to cause some inconvenience to the plaintiff. The petitioner's plea for the transfer of the case must be tested on this touchstone.** (emphasis supplied)”

13). In **Julie Shah's** case (supra) , Mr. Warunjikar points out that, this Court while appreciating highly the general reputation of the learned Judge and despite absence of any allegation regarding integrity of the learned Judge or complaints regarding adverse orders, allowed the application for transfer.

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The reasons for the transfer stated were that the record of the case showed that direction was given to the appellant to file written statement within four days. The roznama indicated that though certain dates were given after the appellant was served, these dates were pre-poned without giving notice to the appellant and the ex-parte orders were passed and an order was passed that the petition shall be heard on day-to-day basis. Lastly, the main grievance of the appellant was that, despite the order of stay of the proceedings upto 10th September, 2012, the learned Judge was pleased to take up the matter before that date for further hearing on the question of access to the child. These facts warranted transfer of the case. The third decision cited in **Govind Sharan's** case (supra), is also an order in “very peculiar and special circumstances” of that case.

14). **Satish Jaggi's** case (supra), involved transfer of a Sessions trial by invoking Section 407 Criminal Procedure Code. In that case, the transfer was sought for primarily on the ground that the Sessions Judge before whom the trial was pending was the elder brother of a sitting MLA who was very close to the father

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of respondent no.3, one of the main accused persons. It was alleged that the father of respondent no. 3 was the previous Chief Minister of the State and that he and the brother of the Learned Sessions Judge belonged to the same political party. Therefore, according to the appellant, he was under a *bona-fide* and genuine apprehension that he will not get justice if the trial was conducted and concluded by the learned Sessions Judge. In such peculiar facts of the case, the Apex Court felt it appropriate to transfer the sessions trial to another court to ensure that justice is not only done but also seen to be done.

15). The last decision cited in ***Shehnaz Mudbhatkal's*** case (supra), is an order passed by the Apex Court not of transfer but of leaving the decision to the learned Judge concerned. The relevant observations are as under :-

“ Certain unfounded allegations have been made against the Presiding Judge of that Court. The apprehensions of the petitioner that she will not get justice there, are without any basis. All the same, since the family matters are sensitive in character and the Judges of the Family Courts have to play a greater participatory role, that objective can only be achieved if a rapport is established by the Judges of such court with the parties concerned. In these circumstances, we leave it to the Judge concerned whether he would prefer to keep

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hearing this matter or recommend a transfer to another Family Court within the same jurisdiction. We leave that option to the learned Judge.”

16). Mr. Lalwani, also relies upon decision of Single Judge of this Court in **Mrs. Charu K. Mehta Vs. Chetan P. Mehta, The Charity Commissioner, Maharashtra State and the State of Maharashtra, reported in MANU/MH/0003/2010 (2010 (2) ALL MR 99)**, wherein the learned Judge records note of caution in exercising powers under Section 24 Civil Procedure Code. The caution is worded in following terms :-

“ . The court hearing the application for transfer, therefore, requires to deal with it with great care and should take not only the facts of the case or the allegations made therein into consideration but should also examine whether there exists circumstances from which reasonable man would think it probable or likely that the presiding officer will be prejudiced against the applicant. If a reasonable man would think on the basis of the existing circumstances that he is likely to be prejudiced, that is sufficient to grant stay or even to transfer the case for that matter. At the same time, it is a duty of the court to reject frivolous, untenable and irresponsible allegations of bias made by dissatisfied litigant/applicant, more particularly when the court finds that the transfer application is filed with an intention to thwart the proceedings. If transfers sought on such grounds/allegations are allowed, they would not only hamper the course of justice but they would cause a grave damage to the administration of justice.”

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17). Coming to the facts of the present case, in my considered opinion, there exists no ground for a reasonable man to think that he is likely to be prejudiced, if the proceedings continue before the same Court. There was no order from the learned Judge preventing the parties from filing interim applications after commencement of the trial. The learned Judge had merely expressed that, ideally no interim application should be made by either parties unless extremely urgent and necessary. It is obvious that, the comment made by the learned Judge was solely for the purpose of maintaining focus of the parties to the trial of the petition for its final disposal. The record also shows that, there is no substance whatsoever in the allegation that the learned Judge had kept the applications of the applicant pending but had allowed the applications of the respondent. As already seen hereinabove, there were only three applications filed by the respondent, two of which were germane to the final hearing of the petition and only one, was for an interim relief which application was agreed to be taken up at the stage of final hearing of the petition by the respondent. On the other hand, the applicant not

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only filed several applications for interim reliefs before the Family Court, but also filed applications in this Court leading to clashing of the dates necessitating adjournment of the trial. It is not the case of the applicant, either in his pleadings or in the arguments advanced that, any attempt was made on his part to avoid the clash of dates so as to ensure the continuation of the trial. In the circumstances, the order of imposition of costs can be construed only as an act of enforcing discipline in conduct of the court proceedings and not an act of prejudice. The learned Principal Judge was perfectly within her powers to pass such orders. The third complaint is about rejection of the application for appointing Court Commissioner for handing over of the child on each date of the access. Considering the age of the child, no fault can be found with rejection of the application on the ground of introduction of a third party, as a Court Commissioner to supervise smooth handing over of the child may create complications.

18). As has been held by the Apex Court in **Kulwinder Kaur's** case and also by the learned Single Judge of this Court in **Charu Mehta's** case (supra) that, the central criterion for the

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Court to consider is not the hypersensitivity or relative convenience or easy availability of legal services or mini grievances but something more substantial, more compelling, more imperiling from the point of view of public justice. In other words, the test is not the individual feelings or responses of the applicant to the circumstances. The test is, whether the circumstances alleged would give rise to apprehension in the mind of a reasonable man that he is likely to be prejudiced if the proceedings are conducted before the same Judge. In my considered opinion, the circumstances relied upon by the applicant do not fall in such category.

19). It is also to be noted that, with filing of the petition for divorce and the counter-claim also for divorce, the intention of the parties as regards continuing with the marital tie is loud and clear. Then dispute remaining for judicial decision would be only of custody of the child, access to the child, maintenance of the child and alimony of the respondent. In such circumstances, when the applicant does not make himself available for cross-examination since the month of March, 2014 an inference can be

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safely drawn that the applicant has merely presented a facade so as to justify the apprehension.

20). Thus, taking an overall view of the matter, in my opinion, no case is made out by the applicant for transfer of the proceedings. Hence, the Miscellaneous Civil Application is dismissed.

(SMT. R.P. SONDURBALDOTA, J)