

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO. 209 OF 2014

Mrs. Reeba Cherian

.....Applicant

V/s.

Mr. George Jacob Vengal

.....Respondent

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Mrs. Reeba Cherian, Applicant-in-person.

Mr. George Jacob Vengal, Respondent-in-person.

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

DATED :- 19th JANUARY, 2015.

P.C. :

1). This application filed under Section 24 of Civil Procedure Code is for transfer of matrimonial petition No.A-491 of 2012 from the file of the learned Principal Judge, Family court, Mumbai to any other Judge in the Family Court. The application was partly heard on 9th January, 2015 when the applicant was represented by a Counsel. On 12th January, 2015 when the hearing commenced, the applicant appeared in person. On a query from the Court, she stated that she

desired to argue her application in person and that she had discharged her advocate. Therefore, she was allowed to argue the application in person. The respondent has been appearing in person since inception.

2). The applicant submitted five reasons for transfer of the proceedings, which reasons, according to her, have created an apprehension in her mind that she may not get justice from the learned Principal Judge. She alleges that (i) on 21st July, 2014 the learned Judge gave private audience to the respondent, (ii) the learned Judge has been forcing her to settle the dispute, (iii) the learned Judge is prejudiced on account of non-settlement of the dispute which prejudice is reflected in her orders, and (iv) the comments in the orders passed, create a feeling for the applicant that the orders are retaliatory orders. Lastly, she argues that justice not only must be done but it must also appear to be done. The respondent has filed affidavit-in-reply refuting every contention of the applicant. He denies in particular that any private audience was given to him by the learned Principal Judge.

3). The proceedings were originally pending in the Court of Principal Judge, Family Court. On 24th June, 2014 they were transferred to Court Room no.2 by way of an administrative order. On 22nd July, 2014 it was transferred back to the Principal Judge. According to the applicant, the day prior to that i.e. on 21st July, 2014 a

private audience was given by the learned Principal Judge to the respondent which resulted into the petition being transferred back. The specific terms in which the allegations are made at para-8 of the application read as follows :-

“8. It has been brought to this Applicant's attention that on 21.07.2014 after the hearing in Court no.2, the Respondent created a huge scene in the Court no.1 premises, crying profusely stating that the Hon'ble Judge of Court no.2 is biased towards the Applicant, and he then met with the Principal Judge to request a transfer back to Court no.1. The Ld. Hon'ble Principle Judge Family Court, Bandra suo-motto again got the matter transferred to her Court from Court room no.2 only on the oral request of the Respondent within a fraction of 28 days without citing any reasons which nothing but makes the Applicant doubt the conduct of the Presiding Officer.”

From the above averments, it is seen that the allegation of private audience is not on the personal knowledge of the applicant but based on some hearsay information received by the applicant.

4). The reason for re-transfer of the petition is available on the record of the proceedings. The rojnama dated 22nd July, 2014 of Court Room no.2 from which the transfer took place, says that it was on account of confidential order passed by the learned Principal Judge. The confidential order is mentioned by the learned Principal Judge in her order dated 4th October, 2014 passed on the application at Exhibit-89, in following terms :-

“At one point of time, I myself transferred the matter to another Court Room. However, on this sensitive issue of overnight access, the male Judge having made comments in the open Court, I was constrained to take back the matter before myself.

5). The applicant complains that the learned Judge is forcing her to settle the matrimonial dispute and non-settlement of the dispute by the applicant has caused prejudice in the mind of the learned Judge. She also states that, the comments as regards non-settlement made by the learned Judge in the orders have created a feeling in her mind that these are retaliatory orders. She refers to the order dated 4th October, 2014 passed on the application for modification of the access. The application was filed by the respondent. At para-21 of the order, the learned Principal Judge refers to the efforts taken by the marriage Counselor to bring about amicable settlement between the parties and says that, at the last minute the applicant refused to sign the consent terms and has chosen litigation over settlement.

6). Any attempt on the part of the Learned Principal Judge to have the dispute settled through the marriage Counselor is nothing unusual and cannot be an indication of prejudice against the applicant. In fact, the learned Judge is expected to impress upon the parties to find out amicable resolution of the dispute as far as possible. That is the mandate of Section 9 of the Family Courts Act. The learned Judge has to proceed with the trial of the case only when the attempt at

settlement fails. Also the observation in the order that, the applicant has backed out of the settlement or has chosen litigation over settlement, would only be a matter of record, based on the report of the marriage counselor. Such observations made in the course of the proceeding cannot be treated as retaliatory observations.

7). There were two more complaints made by the applicant. One was about refusal to take an application on record for transfer of proceedings and refusal to pass any orders relating to the property at Bangalore. The applicant has, however, fairly stated that these complaints were made by her out of ignorance of law and that she has since taken appropriate proceedings, one of them being filing of the present application. Yet another complaint is of imposition of costs for grant of adjournment when according to the applicant, the request for adjournment was fully justified. The adjournment was sought on the ground of ill-health of the Advocate for the applicant.

8). There can be various factors involved in grant or refusal of adjournments, in addition to the reason stated for adjournment. The respondent claims that, he has to travel from Kerala to Mumbai on each date of the matter. The applicant contends that, the respondent in fact comes from Bangalore and not Kerala. Nonetheless, the fact remains that he has to travel from outside to attend to the court proceedings in Mumbai. Besides, the trial in the petition has already

commenced and the respondent is under cross-examination by the applicant. Therefore, imposition of costs cannot be said to be a circumstance sufficient for transfer of proceedings.

9). The respondent alleges that, the applicant is delaying the trial of the petition. According to him, the applicant has been harassing him by filing proceedings at different places and has been resorting to forum hunting. The respondent had filed the petition for divorce in the Family Court at Thiruvalla in the State of Kerala, which is the place of marriage. The applicant got it transferred to Mumbai. She had filed complaint under Section 498A Indian Penal Code and under Sections 3 and 4 of the Dowry Act against the respondent at Bangalore. On completion of investigation, the police at Bangalore filed 'B' Summary stating that the complaint was false. The report of police was accepted by the learned Magistrate and the complaint closed. The applicant has, challenged that order in the Sessions Court at Bangalore. She has also filed proceedings under the Domestic Violence Act at Bangalore against the respondent. Filing of various proceedings at other places by the applicant, will not be relevant for the present application. Therefore, the same cannot be taken into consideration.

10). The ambit of powers of the Court and the manner in which the Court should exercise the same, fell for consideration of the Apex

Court in its decision in **Kulwinder Kaur @ Kulwinder Gurcharan Singh Vs. Kandi Friends Education Trust and Ors. reported in AIR 2008 SC 1333** while deciding appeal against an order refusing transfer. The Apex Court has held that, although 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. Assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for a 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 but something more substantial, more compelling, more imperiling, from the point of view of public justice and its attendant environment. The circumstances alleged by the applicant herein do not fall in that category. Therefore, the Miscellaneous Civil Application is dismissed.

(SMT. R.P. SONDURBALDOTA, J)