

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****MISC.CIVIL APPLICATION NO. 222 OF 2014****Savita Prashant Nikale****..... Applicant****VERSUS****Prashant Ashok Nikale****..... Respondent**

Mr.V.V.Salunkhe for the Applicant.

Mr.Rajan S.Pawar for Respondent.

CORAM : R.D. DHANUKA, J.**DATED : 20th NOVEMBER, 2015****P.C.**

By this miscellaneous civil application filed under section 24 of the Code of Civil Procedure, 1908, the applicant seeks transfer of the Hindu Marriage Petition No.42 of 2014 filed by the respondent husband before the learned Civil Judge, Senior Division to the competent court at Nashik for hearing and final disposal. Some of the relevant facts for the purpose of deciding this application are as under :-

2. Marriage of the applicant was solemnized with the respondent on 4th January, 2013. It is the case of the applicant that in view of the alleged harassment and ill treatment of the respondent to the applicant, the applicant was forced and required to leave matrimonial home and to stay with her parents at Nashik.

3. On 10th February, 2014, the respondent filed a petition (42 of 2014) under section 13(1) (1-a) of the Hindu Marriage Act, 1955 against the applicant praying for dissolution of the marriage on the ground of cruelty.

4. Learned counsel appearing for the applicant states that the applicant is at present residing with her parents at Nashik and is totally dependent upon them. The applicant is unemployed and has no source of income at all. It is submitted that the applicant is not receiving any maintenance from the respondent and has to solely depend upon her parents. Learned counsel for the applicant states that without prejudice to the rights and contentions of the applicant, the applicant is ready and willing to co-habit with the respondent. He submits that the applicant has to travel from Nashik to Panvel on each date of the hearing though the applicant has no source of livelihood. It is not possible for her to undertake and contest the petition filed by the respondent at Panvel. He submits that the distance between the Nashik and Panvel is approximately 180 km and thus the applicant is not in a position to attend the said proceedings and will not be able to get proper legal services at Panvel. The parents of the applicant are old and suffers from various advanced age related ailments. Her two brothers are doing clerical jobs and will not be able to accompany her for the purpose of attending the proceedings filed by the respondent at Panvel.

5. Learned counsel appearing for the applicant invited my attention to the judgment of Supreme Court in case of ***Smt.T.Gayatri Devi vs. Dr.Tallepaneni Sreekanth*** 2013(6) ***Bom.C.R.(SC)*** 119 and in particular paragraphs 3 and 4 and would submit that considering the distance between the place of residence of applicant wife and the place at which the proceedings are filed by the husband, the Supreme Court took a view that the proceedings should be transferred from the place where the husband was staying to the place where the wife was staying. He submits that the convenience of the wife has to be considered by the court while considering application under section 24 of the Code of Civil Procedure, 1908. He submits that there are several other facts which have to be considered by this court

such as that the applicant is an unemployed and totally depends upon the old age parents who are not keeping good health whereas the husband of the applicant is a senior manager of a nationalized bank at Panvel and has sufficient amount of income. The respondent has also not been paying maintenance to the applicant since beginning. He also placed reliance on the judgment of this court forming part of compilation handed in. He submits that if the proceedings are not transferred, the applicant shall not be able to contest the said proceedings filed by the respondent which would caused injustice to the applicant and the proceedings would be undefended.

6. Learned counsel appearing for the respondent on the other hand invited my attention to some of the averments made in the affidavit in reply filed in the proceedings and submits that both the parents of the respondent are suffering from several ailments and in support of this submission, learned counsel placed reliance on some of the averments made in the affidavit in reply. He submits that the family members of the applicants and more particularly her brothers has been threatening by visiting the office premises of the respondent and in that regard the respondent had filed a complaints with the local police station against the family members of the applicant. He submits that in view of the threats given by the family members of the applicant, it would be more appropriate if the proceedings filed by the respondent in the appellate court Panvel to be continued and not transferred as urged by the applicant.

7. Learned counsel for the respondent placed reliance on the judgment of Supreme Court in case of ***Kalpna Deviprakash Thakar vs. Dr. Deviprakash Thakar, (1996) 11 SCC 96*** and would submits that mere convenience of the wife cannot be a ground for transfer of the proceedings under section 24 of the Code of Civil Procedure, 1908.

8. Learned counsel also placed reliance on the judgment of Himachal Pradesh High Court in case of ***Bharti vs. Ravi Sharma in CMPMO No. 127 of 2012*** dated 20th July, 2012 and in particular paragraphs 3 and 4. He submits that it is not necessary that the applicant will have to remain present on all the dates of hearing before the Court at Panvel. Lastly it is submitted that the respondent is willing to make payment of Rs.2,000/- to the applicant for attending the court proceedings.

9. Learned counsel for the applicant in rejoinder submits that though the respondent appears to have been filed some complaints against the applicant, in the complaints the respondent has not alleged any threats against the brother of the applicant or against any family members and the said complaints are frivolous. Learned counsel distinguished the judgment of Supreme Court in case of ***Kalpna Deviprakash Thakar (supra)*** and judgment of Himachal Pradesh High Court in case of ***Bharti (supra)*** relied upon by the learned counsel for the respondent and placed reliance on the subsequent judgments of Supreme Court holding that the convenience of the wife has to be considered while considering the application under section 24 of the Code of Civil Procedure by the court.

10. It is not in dispute that the respondent is a senior general manager employed with a nationalized bank and is employed at Panvel. The respondent has been earning sufficient amount of income holding such post. On the other hand the applicant is totally unemployed and has been staying at Nashik with her parents who are old age and is fully dependent upon them. The brothers of the applicant are doing clerical job and are not able to accompany the applicant for attending the present proceedings from Nashik to Panvel for attending the court proceedings. The distance between the Nashik and Panvel is approximately 180 km. It is also

the case of the applicant that her parents being old and suffering from various advanced age related ailments which are not disputed by the respondent.

11. It is also not in dispute that the respondent has not paid any maintenance to the applicant till today. The father of the applicant is retired and only receives pension as means of livelihood. In these circumstances, in my view it would be more appropriate if the Hindu Marriage petition filed by the respondent is transferred to the Family Court, Nashik. Supreme Court as well as this court in catena of decision has taken a consistent view that while considering the application under section 24 of the Code of Civil Procedure, 1908 the court has to consider the convenience of the wife in addition to the other related factors.

12. Insofar judgment of Supreme Court in case of ***Kalpana Deviprakash Thakar (supra)*** relied upon by the learned counsel for the respondent is concerned, the Supreme Court had considered the fact that the respondent therein was a medical practitioner and his absence from Mumbai would have caused difficulty to his patients also. Supreme Court also considered the fact that the petitioner wife had some near relations in Mumbai and she had not denied the same. The husband had undertaken to bear the traveling expenses of the wife. Palanpur was well connected by train with Mumbai. With these facts in hand, the Supreme Court took a view that the proceedings were not required to be transferred. In my view the fact before the Supreme Court in case of ***Kalpana Deviprakash Thakar (supra)*** were totally different and are clearly distinguishable in the facts of this case. In this case the applicant does not have any relative at Panvel who can accommodate her from to time during the pendency of matrimonial proceedings filed by the respondent. The applicant is totally unemployed and is totally depending upon father who is only giving pension

income and is not keeping good health. In my view the case of Supreme Court in case of ***Kalpna Deviprakash Thakar (supra)*** thus does not assist the respondent.

13. Be that as it may, the Supreme Court as well as this court in later judgments after 1996 the judgment in case of ***Kalpna Deviprakash Thakar (supra)*** was delivered by the Supreme Court has taken a view that convenience of the wife has to be considered while considering an application under section 24 of the Code of Civil Procedure.

14. Insofar as judgment of Himachal Pradesh High Court in case of ***Bharti(supra)*** relied upon by the learned counsel for the respondent is concerned, it is held by the Himachal Pradesh High Court that though the convenience of the wife should be taken into consideration but it would depend on the facts and circumstances of each case. In my view the said judgment does not assist the respondent but assist the applicant. Be that as it may, this court is bound by the judgments of Supreme Court and this court that the convenience of the wife has to be considered by the court while deciding the application under section 24.

15. Insofar as submission of the learned counsel for the respondent that the family members of the applicant had given a threat to the respondent is concerned, in my prima facie view there is no substance in this submission. In the complaint which is belatedly filed by the respondent in the year 2014 during the pendency of the dispute between the parties, there is no allegation of threats as alleged in the affidavit in reply.

16. Insofar as last submission of the learned counsel for the respondent that he is ready and willing to pay compensation of Rs.2,000/- for each date of hearing is

concerned, in my view the said amount of Rs.2,000/- is not reasonable and thus cannot be considered. On the contrary, the applicant is ready and willing to cohabit with the respondent. The respondent however is not accepting this proposal of the applicant, which if would have accepted, it would have put an end to the litigation between the parties substantially.

17. I, therefore, pass the following order :-

- (a) The learned Civil Judge Senior Division Panvel is directed to transfer H.M.Petition No.42 of 2014 filed by the respondent to the Family Court Nashik for hearing and final disposal.
- (b) Both the parties are directed to co-operate with each other and also with the family court Nashik for expeditious disposal of the H.M.Petition filed by the respondent and shall not take unnecessary adjournments.
- (c) Family Court, Nashik is directed to dispose of the proceedings expeditiously and not later than one year from the date of transfer of the present proceedings to the Family Court Nashik by the Civil Judge Senior Division Panvel.
- (d) The Family Court Nashik shall proceed with the matter from the stage at which it is before the learned Civil Judge Senior Division, Panvel.

[R.D. DHANUKA, J.]