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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL MISC. APPLICATION NO.247 OF 2014

Smita @ Ajay Sawant	...Applicant
V/s.	
Ajay @ Alwin Gulab Sawant	...Respondent

Mr.Smita R. Gaidhani for the Applicant.

Mr.Vincent X D'Silva for the Respondent.

CORAM : R.D. DHANUKA, J.
DATE : 19TH NOVEMBER, 2015.

P.C. :-

1. By this application, the applicant seeks transfer of Marriage Petition No.36 of 2012 pending before the District Judge, Thane to the District Court at Kopergaon or District Court, Ahmednagar or at District Court at Nashik or to any other Court. Some of the relevant facts for the purpose of deciding this application are as under :

2. It is the case of the applicant that the applicant was residing at Rahata, District Ahmednagar with her widow mother and brother. In the year 2005, she was required to undergo a surgery. On 6th May, 2008 the applicant married to the respondent. There were disputes and differences between the applicant and the respondent. Prior to the said dispute, the applicant was staying with the respondent and her in laws at her matrimonial home.

3. Some time in the year 2013, the applicant has filed Misc. Application (51 of 2013) against the respondent and his family members under section 12 of the Protection of Women from Domestic Violence Act, 2005 in the Court of Judicial Magistrate First Class, Rahata, District Ahmednagar. The respondent has been served with the papers and proceedings as well as notices in the said matter. The respondent has filed the written statement in the said application and has been pursuing the said proceedings.

4. Some time in the year 2012, the respondent filed a Marriage Petition (36 of 2012) in the District Court at Thane *inter-alia* praying for dissolution of the marriage as per the provisions of the Special Marriage Act. The applicant has filed her written statement and counter claim in the said proceedings. The said proceedings are pending before the District Court, Thane. The applicant made an application for interim maintenance in the said proceedings filed before the District Court, Thane. Certain interim orders were passed by the Court in favour of the applicant in the said proceedings. The applicant also has been granted interim relief by the Court at Ahmednagar under the provisions of Protection of Women from Domestic Violence Act, 2005. The respondent has filed a revision application impugning the said order in the Court of District and Sessions Judge, Kopergaon being Misc. Application No.51 of 2013. The said revision application filed by the respondent is rejected.

5. Learned counsel for the applicant invited my attention to the annexures to the Misc. Application and would submit that the applicant is unemployed and has been staying with her widow mother and her brother at Rahata. She submits that the respondent has been attending the proceedings filed by the applicant in the court at Rahata

and has been prosecuting the said proceedings. She submits that the respondent and his family members has been threatening the applicant in view of the applicant having filed the proceedings against the respondent at Rahata. In support of this submission, learned counsel invited my attention to the complaint made to the police station at Rahata on 18th May, 2013 and also FIR dated 31st October, 2014 against the respondent alleging threats of life alleged to have been given by the respondent.

6. It is submitted by learned counsel for the applicant that there is no direct conveyance available to the applicant for travelling to the District Court at Thane from Rahata, where the applicant has been staying with her widow mother and brother. She submits that the applicant has to request some one to accompany her whenever the matter is listed before the District Judge, Thane. The mother is unable to travel with her being old. The brother of the applicant is doing temporary work and it is not possible for him to accompany the applicant on each of the hearing before the District Judge, Thane. She submits that in view of the threats given by the respondent and his family members to the applicant and which threats may be also given to the witnesses if brought by the applicant to the District Court, Thane and in view of the aforesaid reasons, it would be appropriate if the proceedings filed by the respondent at District Court, Thane are transferred to one of the district Court mentioned in prayer clause (b) of the Misc. Application. She submits that the respondent has already been attending those proceedings filed by the applicant at Rahata and thus no prejudice would be caused to the respondent.

7. In support of her submission that the proceedings filed by the respondent shall be transferred from District Court, Thane to

appropriate Court at Nashik or Ahmednagar or Kopergaon, reliance is placed on the judgment of the Karnataka High Court in case of **Smt.Jayadevi vs. Basavaraj, AIR 1990 Karnataka**, 273 and in particular paragraphs 4 and 5 and it is submitted that even if the applicant has fear psychosis and is afraid of any physical assault of the respondent or his family members when she has to attend the Court proceedings, the Court has ample power to transfer such proceedings even on the basis of such fear psychosis.

8. Learned counsel for the applicant submits that though the applicant has referred to the complaints made by the applicant in the Misc. Application and has annexed the copy thereof, the respondent has not denied the allegations of threat made by the applicant in the affidavit in reply filed before this Court by the respondent.

9. Learned counsel for the respondent on the other hand opposes this petition vehemently on the ground that the criminal complaint filed by the applicant is totally false and submits that though the applicant had filed the complaint on 18th May, 2013 before the concerned police station at Rahata , no reference is made to the said complaint when the applicant applied for payment of Rs.5000/- against the respondent towards expenses for attending the court proceedings in the said application dated 14th October, 2013. He submits that the learned District Judge, Thane has granted an order of interim measures in favour of the applicant. He submits that pursuant to the order passed by this Court, the respondent has already deposit the substantial amount in this Court.

10. It is submitted by learned counsel for the respondent that the respondent has already filed affidavit in lieu of examination in

chief before the District Judge, Thane and only after such affidavit is filed and in view of the fact that the matter is now ready for cross-examination, the applicant has filed another false FIR some time in the year 2014. He submits that the Court may impose any conditions insofar as the alleged threat to the applicant by the respondent is concerned.

11. It is submitted that the judgment of the Karnataka High Court relied upon by the learned counsel for the applicant was based on facts of that case. He submits that in the said judgment it is made clear that the said judgment delivered by the Karnataka High Court was not intended to be a precedent. This Court thus cannot rely upon the said judgment of the Karnataka High Court.

12. It is not in dispute that the applicant has been staying with her widow mother and brother at Rahata for quite some time. The respondent is earning sufficiently. It is the case of the applicant that the respondent being B.E. Electronics has been earning a sum of Rs.45,000/- p.m. is not disputed. It is also not in dispute that the applicant has already filed the proceedings in appropriate Court at Rahata under the provisions of Protection of Women from Domestic Violence Act, 2005 against the respondent. The said proceedings are pending. The respondent has been vehemently opposing the said proceeding by filing affidavit in reply.

13. The revision application filed by the respondent in the court of District and Sessions Judge, Kopargaon impugning the order of interim maintenance granted by the trial Court has been rejected. It is clear that the respondent was attending the proceedings whatever were filed by either of the applicant or by himself in appropriate Court

at Rahata or at Kopargaon.

14. A perusal of the record indicates that the applicant has filed at least two complaints against the respondent alleging threats by the respondent and his family members. The respondent has not disputed the fact that such complaints are filed by the applicant or that such threats are not given by the respondent and his family members. The only argument advanced by learned counsel for the respondent is that the Court may impose conditions on the respondent insofar as the the alleged threats to the applicant of her life is concerned.

15. The Supreme Court as well as this Court has taken a consistent view that while considering the application under section 24 of the Code of Civil Procedure, convenience of the wife is to be considered as a paramount consideration. It is not in dispute that the applicant has been staying with her widow mother and brother. The applicant is unemployed, whereas the respondent has been earning sufficiently. The brother of the applicant is on temporary job and is accordingly unable to accompany the applicant at the time of hearing the proceedings before the District Court, Thane. The respondent has already had been attending the proceedings at Rahata. In my view, it would be thus appropriate that the proceedings filed by the respondent before the District Court, Thane is transferred to the District Court at Kopargaon.

16. Insofar as the allegations of threat alleged to have been given by the respondent is concerned, this Court cannot ignore the complaints filed by the applicant against the respondent which are forming part of record of these proceedings. Insofar as the judgment of the Karnataka High Court relied upon by learned counsel for the

applicant is concerned, a perusal of the said judgment indicates that Karnataka High Court has taken a view that since the applicant was a victim of fear psychosis, it would not be proper or reasonable to compel her to attend the court proceedings filed by the husband with such fear in mind. Though in the said order, it is clarified by Karnataka High court that the said order was not intended to be a precedent, this Court is empowered to take the same view, as taken by Karnataka High Court, though it may be not be precedent of Karnataka High Court for the Courts sub-ordinate to Karnataka High Court. I am of the view that in view of the fact that the applicant is a victim of fear psychosis, it would not be proper or reasonable to compel her to attend the proceedings at District Court, Thane.

17. Insofar as the submission of learned counsel for the respondent that the respondent has already filed affidavit in lieu of examination in chief and thus at this stage the matter shall not be transferred to the District Court at Kopargaon or at any other Court is concerned, I am inclined to accept the submission of learned counsel for the applicant that the cross-examination has not yet begin. The respondent has only filed affidavit in lieu of examination in chief. Even the applicant is likely to examine witnesses. The applicant has fear in her mind that the applicant as well as her witnesses may be threatened once again at the time of attending the court proceedings at Thane. This Court thus can transfer the proceedings to other Court even at this stage when the cross-examination has not commenced.

18. I therefore, pass the following order :-

a). District Court, Thane is directed to transfer Marriage Petition No.36 of 2012 to the District Court at Kopargaon. The learned

District Judge at Kopargaon is directed to dispose of all the proceedings expeditiously.

b). Both parties are directed to co-operate with each other and with the learned District Judge, Kopargaon for expeditious disposal of the proceedings. It is made clear that the observations made by this Court in this order are only for the purpose of deciding the present proceedings. The District Court, Kopargaon shall not be influenced by the observations made by this Court while disposing of the divorce petition.

c). The applicant is permitted to withdraw the amount deposited by the respondent in this Court on 6th November, 2015.

d). The office is directed to issue a cheque in favour of the applicant in her maiden name.

19. The Misc. Civil Application is accordingly disposed of in aforesaid terms. No order as to costs.

(R.D. DHANUKA, J.)