

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION (ST) NO. 34910 OF 2015

Sachin Ramesh Mhatre

..... Applicant

VERSUS

Aditi Sachin Mhatre

..... Respondent

Mr.Uday Warunjikar for the Applicant.

Mr.R.T.Lalwani, a/w. Ms.Sadhana Lalwani for the Respondent.

CORAM : R.D. DHANUKA, J.
DATED : 23rd DECEMBER, 2015

P.C.

1. By this misc. civil application filed under section 24 of the Code of Civil Procedure, 1908, the applicant (husband) seeks transfer of the two proceedings filed by him before the Family Court at Mumbai, Bandra to the Family Court at Thane and seeks clubbing of the Petition No.B-01/2013 pending before the Family Court at Thane. Some of the relevant facts for the purpose of deciding this application are as under :-

2. The applicant and the respondent were married on 25th February, 2007 at Thane. On 6th May, 2009 a son is born out of the said wedlocks. It is the case of the applicant that the respondent went to her parents house at Dadar on 29th July, 2010 for staying for 2-3 months post-delivery, however she stayed there for 13 months. It is the case of the applicant that on 29th August, 2010, the respondent returned to the matrimonial home at Thane after a period of 13 months. The respondent filed a complaint under section 498A of Indian Penal Code against the

applicant on 17th and 18th September, 2010.

3. On 20th November, 2010, the applicant filed a petition before the Family Court at Mumbai for seeking custody of the minor son. On 13th September, 2011 the court rejected the application of the respondent to transfer the proceedings under section 498A of IPC from Judicial Magistrate First Class at Thane to Mumbai.

4. On 8th August, 2012 the applicant filed a petition for dissolution of marriage on the ground of cruelty and desertion before the Family Court at Mumbai. On 9th July, 2013 the applicant filed a petition before the Family Court at Thane praying for transfer all the properties and other assets against the respondent.

5. On 26th September, 2013, the respondent filed an application before this Court for seeking transfer of the petition from Family Court at Thane to Family Court at Mumbai. The said application is rejected by this court by an order dated 21st November, 2013.

6. On 28th January, 2015, the applicant came to be acquitted in the complaint filed by the respondent under section 498A of the IPC. The said order passed by the Judicial Magistrate First Class has been impugned by the respondent before the Sessions Court at Thane.

7. By an order dated 1st September, 2015, this court has expedited the trial at Family Court at Bandra and has directed that the same shall be disposed of on or before 10th December, 2015. By an order dated 4th December, 2015, this

court extended the time frame to decide the proceedings before the Family Court at Bandra by 31st March, 2016.

8. By an order dated 2nd September, 2015, this court has expedited the trial before the Family Court at Thane and directed that the same shall be disposed of on or before 30th April, 2016.

9. Mr. Warunjikar, learned counsel appearing on behalf of the applicant invited my attention to the pleadings filed by the applicant in the three proceedings i.e. two proceedings filed at Family Court at Bandra, and the third proceeding filed at Family Court, Thane. He submits that insofar as proceedings at Family Court Bandra are concerned, the applicant is being cross examined by the learned counsel appearing for the respondent. He submits that insofar as proceedings at Family Court Thane is concerned, the respondent has applied for permission to file additional written statement and the said application is pending.

10. Learned counsel for the applicant also invited my attention to the order passed by this court in the two proceedings filed by the respondent *inter-alia* praying for transfer of the proceedings from Thane to Bandra which were rejected.

11. It is submitted by the learned counsel for the applicant that though the reliefs claimed in the proceedings before the Family Court at Thane and the proceedings filed before the Family Court at Bandra are slightly different, the evidence in all the three proceedings would be common. It is submitted that not only the applicant and the respondent would be witness in all the three proceedings but even father of the applicant would be a common witness. He submits that though by an order passed by this court on 21st November, 2013 in Miscellaneous

Civil Application No.178 of 2013, this court had made it clear that the respondent herein would be entitled to apply for appropriate orders as to tagging of the proceeding at one convenient court and such liberty would serve the purpose which would be in the interest of both parties including the child, the respondent did not file any application for clubbing of both the proceedings in one convenient court.

12. It is submitted by the learned counsel that this court has already directed that all the three proceedings filed in two different courts shall be disposed of expeditiously and not later than early part of the next year. It is submitted by the learned counsel for the applicant that the respondent has been already employed at Thane. In support of this submission, learned counsel invited my attention to the cause title of the two proceedings in which the working address of the respondent is mentioned of Thane. It is submitted that even the appeal filed by the respondent against the applicant for impugning the order of acquittal passed by the learned Judicial Magistrate First Class is pending at Thane which is pursued by the respondent at Thane.

13. Learned counsel appearing for the respondent on the other hand invited my attention to some of the orders passed by various courts by tendering a compilation of orders and other related documents. It is submitted by the learned counsel for the respondent that since 2010, the respondent along with her child has been staying with her parents who have retired. He submits that admittedly the applicant has not been paying any maintenance to the respondent. Only since 2014, the applicant started paying maintenance insofar as child is concerned pursuant to an order passed by this Court. He also invited my attention to the cross examination of the applicant by the learned advocate representing the respondent

in the proceedings at Family Court at Bandra and would submit that the applicant has even threatened the advocate representing the respondent which threats are recorded by the learned judge of the Family Court, Bandra.

14. It is submitted by the learned counsel that the reliefs claimed in all the three proceedings by the applicant against the respondent are totally different. The evidence in all the three proceedings also would be different. He submits that the proceedings filed by the applicant before the Family Court, Thane is for transfer of the immoveable properties which are situated at Thane in the name of the applicant or in the alternate in the name of the child of the applicant and the respondent. He submits that in the said proceedings filed at Family Court at Thane, not only the respondent is impleaded as party defendant but also the developer. He submits that the nature of oral and documentary evidence in the proceedings for divorce and for custody of child would be totally different than the evidence that would be required to be laid by both the parties in the proceedings for transfer of properties. He submits that the oral evidence in case of matrimonial proceedings for seeking divorce and custody cannot be exposed to general public.

15. It is submitted that if the proceedings filed before the Family Court at Bandra are transferred to the Family Court at Thane, members of public including the developer will have access to evidence in the matrimonial proceedings. It is submitted by the learned counsel for the respondent that the applicant himself has in several proceedings filed before this court and in the last affidavit filed in the month of December 2015 has given the address of the respondent at Dadar. He submits that the applicant has also averred that the child of the applicant and the respondent has been staying at Dadar. He submits that considering the nature of employment, the respondent is required to visit various places as per requirement

of the employer. He submits that merely because there was an observation made by this court in one of the order that the respondent along with her child have been staying at Thane, the applicant cannot take advantage of such stray observation which is contrary to even the case of the applicant. He submits that even after the said order is passed, the applicant admitted in various pleadings that the respondent and her child has been staying with her parents at Dadar.

16. It is submitted by the learned counsel for the respondent that though the cross examination of the applicant before the Family Court at Bandra has commenced as far back as on 14th March, 2014, the applicant has filed the present proceedings only sometime on 19th December, 2015.

17. Learned counsel appearing for the respondent invited my attention to some of the grounds raised in this application. He submits that the arguments advanced before this court are contrary to the grounds raised in this application. He submits that it is not urged by the applicant in the miscellaneous civil application that it would be convenient if all three proceedings are heard together.

18. It is submitted by the learned counsel for the respondent that the applicant has been working at Juinagar which is far away from the place where the Family Court at Thane is situated. He submits that the applicant has not been providing any maintenance to the respondent.

19. My attention is also invited to the e-mail dated 19th December, 2015 sent by the applicant to the respondent in which the applicant had requested for an access to the child of the applicant and the respondent from the place of residence of the respondent at Om Avadhoot CHS which is situated at Dadar.

20. In the application filed by the applicant before the Family Court at Bandra (Interim Application NO.84 of 2015) filed on 9th September, 2015 also the applicant has averred that the applicant has temporary accommodation in the vicinity of the house of the respondent where she stays at Dadar with her parents.

21. Mr.Warunjikar, learned counsel appearing for the applicant in rejoinder submits that the test for deciding an application for transfer under section 24 of the Code of Civil Procedure is whether both the proceedings can be conveniently disposed of at one place to avoid any conflict of decision and as per convenience of both the parties. He states that the proceedings for custody of child was required to be filed in view of the child staying at Dadar. He submits that since two of the applications filed by the respondent for seeking transfer of the proceedings are already rejected by this court, the respondent cannot oppose the present application filed by the applicant.

22. Upon making enquiry by this court, the learned counsel for the applicant on instruction states that in addition to the evidence of the applicant, the applicant has proposed to examine 11 witnesses in the said proceedings for divorce.

23. There is no dispute that the respondent has been staying with her parents and the child at Dadar since last five years. The applicant does not pay any maintenance to the respondent. The applicant started paying maintenance to the child only sometimes in the year 2014 pursuant to an order passed by this court. It is not in dispute that in the proceedings filed before the Family Court at Thane, the applicant had applied for transfer of the immoveable property situated at Thane in

favour of the applicant or in the alternative in favour of the son of the applicant and the respondent. In addition to the respondent herein, the applicant has also impleaded the developer in the said proceedings.

24. On perusal of the prayers in all the three proceedings, it is clear that the reliefs sought by the applicant in all three proceedings are totally different. The nature of the evidence which would be required to be laid in the application for divorce and custody petition would be different than the nature of evidence which would be required to be laid in the proceedings for transfer of the property before the Family Court at Thane.

25. In my view, members of public including the developer cannot have access to the evidence led in the matrimonial proceedings which would be personal in nature. If the proceedings at Family Court Bandra are required to be transferred to the Family Court at Thane, the other parties who are parties to such proceedings and have no connection of whatsoever nature with such proceedings also would have access to the evidence laid by the parties in the matrimonial proceedings. In my view the learned counsel appearing for the respondent is right in his submission that on this ground itself the proceedings filed before the Family Court at Bandra cannot be transferred to the Family Court at Thane.

26. Though the applicant in the several affidavits filed in the proceedings has admitted that the respondent along with her child has been staying at Dadar with her parents, the applicant has raised a ground in the present application that the respondent has been staying at Thane and more particularly in paragraph 14(b) of the miscellaneous civil application. The submission of the learned counsel for the applicant is that this court has already rendered a finding that the respondent

wife had been residing at Thane and thus such ground was raised in the miscellaneous civil application. In my view even if this court has made any stray observation that the residence of the wife is at Thane, it is not the case of the applicant that the respondent wife had been staying in Thane along with her child. In my view the applicant has made an attempt to take advantage of the stray observation made by this court in one of the order though the said stray observation is admittedly contrary to the case of the applicant himself.

27. It is not in dispute that though this court has directed the expeditious disposal of the matrimonial proceedings filed by the applicant expeditiously, the cross examination of the applicant is still going on. The applicant has proposed to examine 11 more witnesses in the said proceedings at Family Court at Bandra which itself shows the intention of the applicant to somehow harm the respondent and the child. In my view even on this ground, the applicant has not made out case for transfer of the proceedings from Family Court at Bandra to the proceedings at Family Court at Thane. The respondent has been staying with her parents at Dadar and thus Family Court at Bandra is more convenient to the respondent wife. The Supreme Court as well as this court in catena of decisions has taken a view that while considering an application for transfer under section 24 of the Code of Civil Procedure, convenience of the wife has to be considered by the court.

28. There is no dispute that the respondent has been staying with her parents since 2010. The parents of the respondent have already retired. The child of the applicant and the respondent is looked after by the parents of the respondent and also by the respondent after she returns to her parents house after her service hours. The access of the child is also provided to the applicant at Dadar.

29. A perusal of the record clearly indicates that the intention of the applicant is somehow to delay the proceedings on one or the other ground. The real purpose of the applicant filing this application for transfer of these proceedings from Bandra to Thane appears to harass the respondent and her child.

30. In my view thus no case is made out for transfer of the proceedings as prayed in the miscellaneous civil application. Application is devoid of merits and is accordingly dismissed with cost quantified at Rs.25,000/- which shall be paid by the applicant to the respondent within two weeks from today.

[R.D. DHANUKA, J.]