

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

MISCELLANEOUS CIVIL APPLICATION NO. 122 OF 2016

Sow. Jyoti Babasaheb @ Gajanan Pawar
Age 32 years, occup. Household,
R/o C/o Ganeshrao Santukrao Rokde,
Near Cotton Market, Sillod Road,
Bhokardan, Tq. Bhokardan, Dist. Jalna .. Applicant

versus

01. Babasaheb @ Gajanan s/o Anandrao
Pawar, Age 42 years, occup. service,
R/o Singaon Jahagir, Tq. Deulgaonraja,
Dist. Buldana
02. Raju s/o Madan Dukre,
Age 34 years, occup. contractor,
R/o Ward No.6, Sakharkheda,
Tq. Sindhkhedraja, Dist. Buldana .. Respondents

Mr. Pradeep V. Ambade, Advocate for applicant
Mr. A. M. Nagarkar, Advocate for respondent no. 1

CORAM : SUNIL P. DESHMUKH, J.
DATE : 31st August, 2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard learned counsel for parties finally, by consent.

2. This miscellaneous civil application is moved by wife, seeking transfer of proceedings bearing hindu marriage petition no. 267 of 2015 filed by respondent no. 1 in the court of Civil

Judge, Senior Division, Buldana, to the court of Civil Judge, Senior Division, Jalna.

3. Learned counsel for applicant has pointed out that there are two proceedings pending against respondents in the court at Bhokardan, dist. Jalna and that the respondent is attending the same. It has further been pointed out that distance between Bhokardan and Buldana is about 70 kilometers and between Bhokardan and Jalna is about 20 kilometers. It is submitted that the applicant does not have any source of income and is living with her age old parents with a child of eleven years.

4. The couple has been residing separately since the relations became strained. While the respondents reside at Buldana, the applicant-wife has started residing with parents at Bhokardan.

5. Learned counsel for applicant contends that while the proceedings seeking maintenance had been filed and an order had been passed in the same in April, 2016, but the applicant had not been aware of the same when the present proceedings had been lodged in high court on first day of re-opening after summer vacation. The order of maintenance had been realized by applicant only upon reply filed by respondent. There was no intention underlying keeping away the court from said position. Non disclosure of the order is on account of ignorance of the

same having been passed in April, 2016. There was no attempt to suppress the order as is being alleged by the other side. In the circumstances, although the order refers to granting of travelling allowance, it is difficult to travel to Buldana which is at a distance of about 70 kilometers. In view of the same, learned counsel requests for transfer of proceedings from court at Buldana to the court at Jalna.

6. Learned counsel Mr. Nagarkar appearing for respondents submits that the application should be thrown out for suppression of fact of granting travelling allowance.

7. He submits that a fraud in the process is being played and purports to rely on a decision of the supreme court in the case of *S. P. Chengalvaraya Naidu v. Jagannath* reported in 1994 AIR SCW 243, wherein, it appears to have been considered that fraud avoids all judicial acts and that a judgment obtained by fraud is a nullity.

8. However, looking at the present circumstances, said citation hardly be of any avail to respondents, for, non reference to the order passed in maintenance proceedings has been explained and the explanation appears to be plausible. The order for maintenance had been passed on 22-04-2016 and the miscellaneous civil application has been filed on the first day of

re-opening of the high court and it has been referred to that till the date of filing of present application, the applicant had been unaware of the order passed in the maintenance proceedings. The order had been passed by the court at Buldana.

9. In view of aforesaid, I am not enamored by the submissions on behalf of the respondents that non disclosure of the order in maintenance proceedings would tantamount to suppression of fact. The proceedings are requested to be transferred for very different reasons and the maintenance proceedings are not the proceedings on which basis transfer is asked for.

10. Learned counsel for respondent is not in a position to dispute veracity about distance between places referred to above nor of the inconvenience caused to the applicant. Looking at the circumstances under which applicant is living particularly that parents with whom she is residing are age old and also has a child of eleven years and that she has no source of livelihood and since the two proceedings are pending in Bhokardan court, I deem it appropriate to consider that the application deserves positive consideration.

11. Learned counsel for the applicant-wife, on instructions, gracefully submits that she is giving up her claim for travelling

allowance as had been granted under order dated 22-04-2016 in the maintenance proceedings.

12. In the circumstances, application stands allowed in terms of prayer clause (B) and disposed of.

13. Rule made absolute accordingly.

SUNIL P. DESHMUKH,
JUDGE

pnd