

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.811 OF 2015**

Mrs. Albertina Arlina Da Silva e Ferrao,
Major of age,
r/o. Landscape Shire,
Flat No.104/B, Second Floor,
Kerant, Caranzalem, Panaji, Goa.

Through power of attorney,
Mrs. Perpetua Conceicao Fernandes,
Major of age,
Resident of Landscape Shite,
Flat No.104/B, second floor,
Kerant, Caranzalem, Panaji, Goa.

.... Petitioner

V/s

Mr. Vinjul Roman Ferrao,
Major of age,
r/o. H.No.113, 2nd Daddio,
Telaulim, Navelim,
Salcete, Goa.

.... Respondent

Mr. J. Godinho, Advocate for the Petitioner.

Mr. Avdhut S. Arsekar with Mr. Harshad Arsekar, Advocate for the Respondent.

CORAM : C.V. BHADANG, J.

DATE : 13th APRIL, 2016

ORAL ORDER :

By this petition, the petitioner is seeking transfer of Marriage Petition No.12/2015/II from the file of the learned Senior Civil Judge, Margao to the Court of the learned Senior Civil Judge at Panaji.

2. The brief facts are that the respondent has filed the aforesaid marriage petition against the petitioner under Article 4(4) of the

Portuguese Civil Code for dissolution of marriage. That petition is pending before the learned Senior Civil Judge at Margao. The petitioner claims that she is residing at Panaji-Goa. She has also initiated proceedings under the Protection of Women from Domestic Violence Act, 2005 (Act, for short) before the learned Judicial Magistrate, First Class at Panaji. It is contended that she was forced by the respondent and her in-laws to leave the matrimonial house. It is contended that the petitioner is dependent on her parents for financial help. It is contended that the petitioner would be required to travel to Margao for defending the case. It is also contended that on account of the threats held, out the petitioner apprehends danger to her life and limb, in case she is required to defend the petition at Margao. It is in these circumstances that the petitioner is seeking the transfer of the matrimonial petition to Panaji.

3. The respondent has opposed the prayer. It is contended that the petitioner is working in U.K. and is not personally attending the matrimonial petition as well as the domestic violence case, which are looked after, by her power of attorney holder. It is contended that even otherwise, the distance between Margao and Panaji is 33 kms and the case of inconvenience set up cannot be accepted. The allegations about any possible threat are also denied.

4. It is next contended that Margao Court is the competent Court having territorial jurisdiction to entertain the petition and, as such, no case is made out for transfer of the petition to Panaji.

5. I have heard the learned Counsel for the petitioner and the respondent. On behalf of the petitioner strong reliance is placed on the decision of the Hon'ble Supreme Court in the case of ***Sumita Singh V/s. Kumar Sanjay & Anr.*** reported in ***(2001) 10 SCC 41*** in order to submit that in such cases it is the convenience of the wife which has to be looked at and would assume primacy. Reliance is also placed on the decision of this Court in the case of ***Anisha Sanjay Hinduja V/s. Sanjay Shrichand Hinduja*** reported in ***2003 (3) Mh.L.J. 139*** and ***Komal w/o. Vitthal Suryawanshi V/s. Vitthal Dhanaji Suryawanshi*** reported in ***2013 (1) Mh.L.J. 268***. The learned Counsel has also referred to Article 5 of the Family Laws. The learned Counsel has next submitted on the basis of the decision of this Court in the case of ***Shri Domnic Anthony Fernandes V/s. Smt. Petorlina Antao Fernandes*** reported in ***1989 (2) G.L.T. 238*** that Article 5 dealing with jurisdiction has been replaced by Article 75 of the Portuguese Civil Code. It is submitted that the Panaji Court would have jurisdiction to entertain the petition as the petitioner

who is the respondent in the matrimonial petition is residing at Panaji.

6. On the contrary, it is submitted by the learned Counsel for the respondent that the marriage between the parties was performed and is registered at Margao and the parties also last resided together at Margao. It is submitted that both under Article 5 of the Family Laws and Article 75 of the Portuguese Civil Code, it is the Court of domicile or residence of the plaintiff which shall have jurisdiction to entertain suits for divorce. It is submitted that the petitioner has failed to demonstrate that Panaji Court, would have territorial jurisdiction and in the absence thereof the Matrimonial Petition cannot be transferred, as prayed. It is submitted that even on merits no case is made out inasmuch as the petitioner is residing and is working for gain in U.K. and is not personally attending the petition before the Court at Margao. The learned Counsel also points out, the distance between the two places in order to submit that no prejudice is caused.

7. I have considered the circumstances and the submission made. At the outset, it is necessary to mention that transfer of a matter from one Court to another, presupposes that both such Courts are otherwise competent and have territorial jurisdiction to entertain the

matter/petition. To put it otherwise, by way of transfer of petition, this Court cannot confer jurisdiction on a Court, where there exists none. Coming back to the present case, it is to be shown that the Court of Senior Civil Judge, Panaji would have territorial jurisdiction to entertain the petition. It is true that as per Section 19 of the Code of Civil Procedure, 1908, the Court having jurisdiction over the place where defendant/respondent resides would have jurisdiction. However, in the present case, the matter is governed by the Portuguese Civil Code and reliance is placed on behalf of the petitioner initially on Article 5 and on Article 75 of the same which read thus:

Article 5 – A suit for divorce shall be instituted either in the Court of domicile or in the Court having jurisdiction over the place where the plaintiff has his residence; but should the plaintiff reside in a foreign country, the respective suit shall be instituted in the Court of Division of Lisbon.

Article 75 – Divorce and separation – the Court of domicile or residence of the plaintiff shall have jurisdiction for suits for divorce and separation of persons and assets.

8. It can thus be seen that, none of these Articles provide that the Court having jurisdiction over the place of residence of the respondent shall have territorial jurisdiction. As noticed earlier, it is not in dispute that the marriage was solemnized and was registered at Margao and that the parties last resided together at Margao.

9. In the case of *Sumita Singh* (supra), the husband had filed matrimonial proceedings in Ara, Bhojpur (Bihar) while the wife was staying at Delhi and the distance between the two places was about 1100 kms. It can further be seen that there was no dispute in that case as to the jurisdiction of the Court to entertain the petition at Delhi. There cannot be any manner of dispute with the proposition that in such cases it is the convenience of the wife which has to be looked at and would assume primacy. However, as noticed earlier this presupposes that both such Courts have otherwise territorial jurisdiction to entertain the petition. Thus, I find that the present petition cannot be entertained as the petitioner has failed to demonstrate that the Court of the Senior Civil Judge at Panaji would have territorial jurisdiction to entertain the petition.

10. The petition is accordingly dismissed.

C.V. BHADANG, J.

NH/-