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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO.137 OF 2015

Shri Ganpat D. Kulthe)
Age : 76 years, Occupation : Retired)
Residing at 6, Kinara Co-operative)
Housing Society, 1st Floor, Opposite)
Lilavati Hospital, Bandra (West))
Mumbai – 400 050.) ...Applicant

....Versus....

Shri Hasansaheb Miyalal Mushrif)
Age : 59 years, Occupation : Social)
Service, Residing at 311, A-Ward,)
Mujawar Galli, Taluka Kagal,)
Kolhapur – 416 216)

And

having alternate address at Room No.414)
& 503, Aakashwani Aamdar Niwar)
Near Mantralaya, Mumbai – 400 032.) ...Respondent

Mr.Sagar Rane for the Applicant.

Mr.Shriniwas Patwardhan for the Respondent.

CORAM : R.D. DHANUKA, J.
DATE : 9TH FEBRUARY, 2016.

ORAL JUDGMENT :-

1. By this Miscellaneous Civil Application, the applicant seeks transfer of Special Civil Suit No.134 of 2011, which is pending in the

Court of 3rd Joint Civil Judge, Senior Division, Kolhapur to this Court in exercise of powers under section 24(1)(b)(i) of the Code of Civil Procedure, 1908.

2. The respondent was a Minister of State from 2000 to 2009 and is a sitting member of Legislative Assembly, Maharashtra. Some time in the year 2000, the respondent filed a suit against the appellant in the Court of 3rd Joint Civil Judge, Senior Division, Kolhapur *inter-alia* praying for damages to the tune of Rs.1,00,05,000/-. The applicant has already filed his written statement in the said suit. It is the case of the applicant that the said suit filed by the respondent had been listed for about 33 times before the 3rd Joint Civil Judge, Senior Division, Kolhapur when the respondent remained present only on three occasions. The learned trial Judge has also imposed cost on the respondent on account of repeated adjournments sought by the respondent.

3. Learned counsel appearing for the applicant submits that the applicant has been suffering from diabetes for quite some time and is required to take medical treatment regularly. He submits that the applicant is 76 years of old and is retired, whereas the respondent, who is a sitting M.L.A., is aged about 59 years. He submits that in addition to the place of the respondent at Kolhapur, the respondent has his alternate address at Room No.414 & 503,

Aakashwani Aamdar Niwas, Near Mantralaya, Mumbai -32. In support of his submission, the applicant is not keeping good health, my attention is invited to the medical report annexed to this Miscellaneous Civil Application and also produced the original of the latest blood report of the applicant to show that he is still suffering from heavy diabetes.

4. Learned counsel for the applicant also invited my attention to an order passed by this Court on 15th September, 2014 in Criminal Application No.444 of 2014, which was filed by the applicant herein against one Dr.Mahesh S. Chandurkar and another under section 407 of the Code of Criminal Procedure *inter-alia* praying for transfer of the complaint filed by the respondent therein in Sangli Court to the Court at Mumbai. He submits that after considering various similar facts, this Court was pleased to transfer the said criminal proceedings filed by the respondents therein to appropriate Court at Mumbai.

5. It is submitted by learned counsel for the applicant that the applicant had been attending the proceedings at Kolhapur time and again but now it is not possible for him to visit Kolhapur which is about 500 K.M. from Mumbai with such a health condition. He submits that if the proceedings are transferred to Mumbai, the applicant would be in a position to defend the suit filed by the respondent for defamation.

6. Mr.Patwardhan, learned counsel appearing for the respondent on the other hand submits that as far as the accommodation in Aakashwani Aamdar Niwas, Near Mantralaya, Mumbai is concerned, the said accommodation is provided to the respondent in view of he being a member of legislative assembly and is being used by the respondent only when he visits Mumbai for attending the assembly sessions. He submits that his permanent place of residence is at Kolhapur. It is submitted that the respondent has admittedly now filed an affidavit of examination in chief. The matter is ready for cross-examination of his client by the applicant.

7. He submits that the suit is filed by the respondent for damages on the ground of defamation and it would be appropriate if the said suit is tried only at Kolhapur and not in Mumbai. It is submitted that if the suit is transferred to the original side of this Court, several documents relied upon by the respondent which are in Marathi, it would be inconvenient for the Court as well as the parties to place reliance on such documents.

8. Insofar as the order passed by this Court on 15th September, 2014 in Criminal Application No.444 of 2014, relied upon by learned counsel for the applicant, which was filed by the applicant against Dr.Mahesh S. Chandurkar & another is concerned, it is submitted that the said order is clearly distinguishable in the facts and

circumstances of this case. He submits that the said application made by the applicant herein was under section 407 of the Code of Criminal Procedure which powers can be exercised by the Court, if it is found that it would be more convenient considering the convenience of parties proceedings can be transferred from one Court to another. He submits that the powers of the Civil Court under section 24 of the Code of Civil Procedure, 1908 however are very limited. He submits that convenience of the parties cannot be a ground while deciding the application under section 24 of the Code of Civil Procedure.

9. A perusal of the record indicates that there is no dispute that the applicant is 76 years old, whereas the respondent is 59 years old. The applicant is suffering from diabetes as is apparent from the medical test report produced before this Court. The applicant is a retired person, whereas the respondent is a sitting M.L.A. and has been frequently visiting to Mumbai for attending assembly sessions. A perusal of the Roznama produced by the applicant of the trial Court proceedings also clearly indicates that the respondent was absent most of the times when the matter was appeared before the Court of 3rd Joint Civil Judge, Senior Division, Kolhapur and the learned trial Judge has also imposed costs upon the respondent for seeking unnecessary adjournments.

10. It is not the case of the respondent that he is suffering from

any such illness or will not be able to attend the proceedings at Mumbai if it is transferred to Mumbai.

11. Insofar as the order passed by this Court on 15th September, 2014 in Criminal Application No.444 of 2014, which was filed by the applicant against Dr.Mahesh C. Chandurkar and another under section 407 of the Code of Criminal Procedure is concerned, a perusal of the said order clearly indicates that this Court had considered the fact that the applicant is a senior citizen and is unemployed.

12. Insofar as the submission of learned counsel for the respondent that convenience of the parties cannot be the criteria while deciding the application under section 24 of the Code of Civil Procedure is concerned, in my view, the powers of the Court under section 24 of the Code of Civil Procedure are wider than the power under section 407 of the Code of Criminal Procedure. Under section 24 of the Code of Civil Procedure, such power can be exercised by the Court on the application of any of the parties or even *suo-moto* without any notice to transfer the proceedings described in the said provision. I am not inclined to accept the submission of learned counsel for the respondent while considering the application under section 24 of the Code of Civil Procedure that the convenience of the parties cannot be considered by this Court. A perusal of the record

clearly indicates that the applicant is a senior citizen and is not keeping good health. The respondent on the other hand is a sitting M.L.A. and is frequently visiting Mumbai. This Court cannot over look these admitted facts while considering the application under section 24 of the Code of Civil Procedure. A party to the litigation must be in a position to pursue or defend the proceedings with a view to get justice in the matter.

13. In my view, there will be no prejudice caused to the respondent if the proceedings filed by the respondent are transferred from the Court of 3rd Joint Civil Judge, Senior Division, Kolhapur to this Court. The applicant has thus made out a case for transfer of the proceedings filed by the respondent in the Court of 3rd Joint Civil Judge, Senior Division, Kolhapur to this Court.

14. Insofar as the submission of learned counsel for the respondent that if the proceedings pending at Kolhapur Court are transferred to the original side of this Court, there will be inconvenience to the advocates as well as to this Court in view of the fact that some of the documents relied upon being in Marathi, in my view the parties can always apply for translation of those documents, if required. There is thus no merits in this submission of learned counsel for the respondent.

15. Insofar as the submission of learned counsel for the

respondent that the matter is at the stage of cross-examination of the respondent is concerned, the fact remains that the cross-examination of the respondent has not yet commenced. In my view, thus no hardship would be caused to the respondent, if the matter is transferred from the Court of 3rd Joint Civil Judge, Senior Division, Kolhapur to this Court on the Original Side from the stage, where it is as on today expeditiously.

16. I therefore, pass the following order :-

i). Miscellaneous Civil Application No.137 of 2015 is made absolute in terms of prayer clause (a).

ii). The learned Judge of 3rd Joint Civil Judge, Senior Division, Kolhapur is directed to transmit the papers and proceedings in Special Civil Suit No.145 of 2011 to this Court on the Original Side expeditiously.

iii). The parties are directed not to seek any unnecessary adjournments before this Court while hearing of the said proceedings.
No order as to costs.

(R.D. DHANUKA, J.)