

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****MISC. CIVIL APPLICATION NO. 100 OF 2015****Shubangi Anand Joshi****..... Applicant****VERSUS****Anand Jayant Joshi****..... Respondent****ALONGWITH****MISC. CIVIL APPLICATION (ST) NO. 12602 OF 2015****Anand Jayant Joshi****..... Applicant****VERSUS****Shubangi Anand Joshi****..... Respondent**

Ms.Rebecca Gonsalves for the Applicant in Misc.Civil Application No.100 of 2015 and for Respondent in Misc.Civil Application (St) No.12602 of 2015.

Mr.Sachindra Shetye for the Respondent in Misc.Civil Application No.100 of 2015 and for Petitioner in Misc.Civil Application (St) No.12602 of 2015.

CORAM : R.D. DHANUKA, J.**DATED : 29th FEBRUARY, 2016****P.C.**

By consent of parties both the miscellaneous civil applications were heard together and are being disposed of by a common order.

2. Miscellaneous Civil Application No.100 of 2015 is filed by the wife inter alia praying for transfer of the Marriage Petition No.A-2521 of 2012 and Custody Petition No. D-6 of 2013 pending in the file of the Family Court at Bandra, Mumbai to the Family Court at Kolhapur. Miscellaneous Civil Application (St) No. 12602 of 2015 is filed by the husband inter alia praying for transfer of both the aforesaid proceedings from the Court of Family Court, Bandra to Family Court

Pune.

3. Some of the relevant facts for the purpose of deciding these two proceedings are as under :-

4. The parties were married on 26th December, 2004 in Kolhapur. On 22nd January, 2008 a female child was born out of the said wedlock.

5. It is the case of wife that on 2nd May, 2012 because of the ill-treatment of the husband and his family members, the wife along with the child came to Mumbai. During that period, the father of the applicant was serving in Mumbai. It is the case of the applicant wife that her father was having place of residence at Mumbai during that period.

6. In the month of October, 2012, the appellant wife filed M.J.Petition No.2521 of 2012 for judicial separation, custody and maintenance and residence. In the month of January 2013 the respondent filed a Custody Petition No.D-6 of 2013 in the Family Court Bandra for custody of the child on weekends.

7. In the month of April 2013, the applicant wife filed miscellaneous civil application (85 of 2013) in this court inter alia for transfer of the custody petition filed by the husband at Family Court, Pune to Family Court, Mumbai.

8. On 29th July, 2013 this court passed an order in the said Miscellaneous Civil Application No. 85 of 2013 thereby transferring the proceedings filed by the husband at Pune to Family Court, Mumbai.

9. There is no dispute that pursuant to the order passed by this court in

Miscellaneous Civil Application No. 85 of 2013 filed by the applicant, both the proceedings i.e. one proceeding filed by the wife and another by the husband are pending before the Family Court at Mumbai.

10. It is the case of the applicant wife that in the month of May 2015 the applicant has shifted to Kolhapur where her parents are permanently staying with minor child who according to the applicant has been admitted in the school at Kolhapur. The parents of the applicant has a bigger house at Kolhapur. The applicant is also not keeping good health. It is the case of the applicant that the applicant cannot attend the proceeding at Mumbai along with her child. It is the case of the applicant that the respondent husband has been paying maintenance of Rs.3,000/- for the applicant wife and a sum of Rs.6,000/- for a child.

11. For various grounds recorded in the Miscellaneous Civil Application No.100 of 2015, the applicant wife seeks transfer of both these proceedings at Kolhapur.

12. Mr.Shetye, learned counsel appearing for the husband on the other hand invited my attention to the order passed by the Family Court in which the applicant had applied for custody of the child. He submits that the Family Court has made observations about the place of residence of the applicant at Mumbai. He submits that the parents of the applicant at the material time was not staying at Mumbai but were all throughout staying at Kolhapur. He submits that the applicant had brought the child to Mumbai without any prior intimation to the husband and was staying at her aunt's house and not at her parents' house. He submits that the Family Court has rejected the application for custody on the ground of jurisdiction. He submits that though the applicant took some time to challenge the said order, the applicant did not file any appeal against the said order passed by the Family

Court.

13. Learned counsel invited my attention to the averments made in the miscellaneous civil application filed by the husband and more particularly the proposal given by the husband in the pleadings filed by him that the child who has been taken by the wife to the Kolhapur can continue his study in a better school at Pune. A proposal is also made that if these proceedings are transferred to Pune where the husband is staying, the respondent husband is ready and willing to provide a flat of one bedroom, hall, kitchen on leave and licence basis at Pune where the applicant along with the minor child can stay during the course of prosecution of both these proceedings if transferred to Pune apart from the maintenance already being paid by the husband to the applicant.

14. In rejoinder, learned counsel appearing for the applicant submits that though the respondent husband has given a proposal for providing accommodation of one bedroom, hall, kitchen flat on leave and licence and is ready and willing to pay maintenance of total amount of Rs.9,000/- to the applicant and the minor child, in view of the conduct of the respondent and his family members which are described by the applicant in the affidavit in reply filed in the miscellaneous civil application filed by the husband, the applicant does not want to shift to Pune.

15. A perusal of the record indicates that the applicant along with child had shifted to Mumbai for sometime in the year 2012 till they were shifted to Kolhapur in the month of May 2015. Family Court had passed an order for return of the application filed by wife for custody for presentation before proper court on the ground that the child was most of the time staying at Pune. There is no dispute that in the said order, Family Court had made observation that the applicant was

staying at the relevant time at Mumbai in her aunt's house. In my view merely because such observation was made by the Family Court about her place of residence in Mumbai at her aunt's house, the fact remains that the applicant has now shifted to Kolhapur in the month of May 2015 along with her child.

16. Learned counsel appearing for the applicant wife rightly invited my attention to the averments made by her in the earlier miscellaneous civil application (85 of 2013) contending that the parents of the applicant had their house at Mumbai at the relevant time when the father of the applicant was working in Mumbai. It is the case of the applicant that after retirement of the father who was serving at Mumbai, he shifted to Kolhapur. This court while allowing Miscellaneous Civil Application No. 85 of 2013 on 29th July, 2013 took cognizance of the fact that the applicant at that point of time was staying at Mumbai and thus had passed an order of transfer of the proceedings from Pune to Mumbai. This court considered the convenience of the applicant wife while passing the said order in Miscellaneous Civil Application No. 85 of 2013 which has to be considered under section 24 of the Code of Civil Procedure, 1908.

17. A perusal of the record indicates that it is not in dispute that the parents of the applicant have a permanent place of residence at Kolhapur. It is the case of the respondent himself in all the proceedings all throughout that the parents of the applicant has been staying at Kolhapur all throughout and has permanent place of residence at Kolhapur.

18. A perusal of the record further indicates that the applicant has already got the child admitted in a school at Kolhapur. The parents of the applicant has bigger house at Kolhapur and can conveniently stay with her parents at Kolhapur.

19. Insofar as the proposal made by the respondent in his miscellaneous civil application is concerned, the applicant doesn't want to shift to Pune. The reason for not shifting to Pune are recorded in the reply of the applicant filed in Miscellaneous Civil Application (St) No. 12602 of 2015. According to the applicant, the applicant doesn't want to shift to Pune where the applicant will not have the emotion and family support. According to the applicant the applicant who is staying in her bigger house with her parents and staying safely and will have no safety in one bedroom, hall, kitchen offered by the respondent at Pune along with her minor child. One more reason rendered in the affidavit in reply by the applicant is that since the applicant was beaten up with cruelty by the husband and his family members at Pune, the respondent doesn't want to shift to Pune. The respondent also is having a place of residence at Kolhapur and has been frequently visiting Kolhapur. Even for the purpose of having access of the minor child, the respondent has been visiting at Kolhapur.

20. Insofar as the said proposal given by the respondent in the miscellaneous civil application filed by the respondent is concerned, since the applicant is staying with her parents in a bigger house and the child is already admitted in the school at Kolhapur and in view of her allegation of cruelty made against the respondent and his family members, in my view the applicant cannot be forced to shift to Pune for the purpose of defending the litigations filed by the respondent and for prosecuting the proceedings filed by her in Pune.

21. There are catena of decisions rendered by the Supreme Court and by this court that while considering application for the transfer of the proceedings under section 24 of the Code of Civil Procedure, 1908, the convenience of the wife has to

be considered.

22. In my view the applicant wife has thus made out a case for transfer of the proceedings filed by the husband and by her at Mumbai to the Court at Kolhapur. I, therefore, pass the following order :-

- (a) Miscellaneous Civil Application No.100 of 2015 is made absolute in terms of prayer clause (A).
- (b) Miscellaneous Civil Application (St) No. 12602 of 2015 is dismissed.
- (c) The Family Court at Bandra is directed to transmit the papers and proceedings of Marriage Petition No.A-2521 of 2012 and Custody Petition No. D-6 of 2013 to the Family Court at Kolhapur expeditiously and the same are directed to be heard together.
- (d) Hearing of the Marriage Petition No.A-2521 of 2012 and Custody Petition No. D-6 of 2013 is expedited.
- (e) The learned Family Court at Kolhapur shall make an endeavor to dispose off both the proceedings within one year from the date of transmission of the papers and proceedings. Both parties are directed to co-operate with each other and with the learned family court in expeditious disposal of the proceedings.
- (f) Both parties are directed to appear before the Family Court, Kolhapur on 14th March, 2016 for directions.
- (g) Both the learned counsel have agreed that the interim arrangement of custody/access of the child will be continued

till disposal of the proceedings by the Family Court at Kolhapur. It is made clear that whatever interim arrangements has been already arrived at and is in force till today shall be continued till disposal of the proceedings by the Family Court at Kolhapur. No separate application for continuation of the said arrangement is required to be made.

23. Miscellaneous Civil Application No.100 of 2015 and Miscellaneous Civil Application (St) No. 12602 of 2015 are disposed of in the aforesaid terms. No order as to costs.

[R.D. DHANUKA, J.]