

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****MISC.CIVIL APPLICATION NO.190 OF 2016****Smt.Jayshree Vaibhav Gaikwad****..... Applicant****VERSUS****Vaibhav Premachand Gaikwad****..... Respondent**

Mr.J.S.Yadav, i/b. Mr.Vilas Tapkir for the Applicant.

Mr.Vaibhav Gaikwad Respondent present in person.

CORAM : R.D. DHANUKA, J.**DATE : 19th SEPTEMBER, 2016****P.C.**

By this application filed under section 24 of the Code of Civil Procedure, 1908 the applicant seeks transfer of Marriage Petition No.29 of 2016 filed by the respondent before the Civil Judge, Senior Division at Kalyan Court, District Thane to the Court of learned Civil Judge, Senior Division Kopergaon, District Ahmednagar. Some of the relevant facts for the purpose of deciding this application are as under :-

2. The applicant and the respondent married on 24th March, 2015. It is the case of the applicant that the respondent and his family members had beaten up the applicant and as a result thereof she was aborted. The respondent filed Marriage Petition No.29 of 2016 on 8th January, 2016 before the learned Civil Judge, Senior Division at Kalyan Court, District Thane. The applicant has filed a separate proceedings against the respondent under the Domestic Violence Act before the Court of JMFC Court, Rahata, District Ahmednagar. The respondent has filed affidavit in the said proceedings filed by the applicant.

3. Learned counsel appearing for the applicant submits that the applicant has been staying with her father who is suffering from several diseases and due to his old age, has no source of income and is not able to accompany the applicant for attending the court proceedings. The mother of the applicant is housewife and illiterate. He submits that the distance between the Loni and Kalyan is more than 250 km and it takes about 8 to 9 hours. He submits that because of the old age of the parents and in view of they not keeping good health, they are not able to accompany the applicant to travel from Loni to Kalyan.

4. It is the case of the applicant that in view of the past conduct of beating the applicant by the respondent and his family members, the applicant apprehends physical assault from the respondent if she attend the proceedings at Kalyan.

5. Learned counsel appearing for the applicant placed reliance on the judgment of this court in case of ***Jayshree Parmeshwar Patil vs. Parmeshwar alias Ghanshyam Pitambar Patil 2013 (4) Mh.L.J. 379*** and in particular paragraph 6 thereof.

6. The application filed by the applicant is vehemently opposed by the respondent who appears in person. The respondent invited my attention to some of the annexures annexed to the affidavit in reply. He submits that the distance between the place of residence of the applicant and the Kalyan Court is not 250 km but is about 215 km. He submits that the parents of the applicant are not aged and are healthy. He submits that the applicant is also educated and can travel alone.

7. It is submitted by the respondent that the father of the respondent is 65 years

old and is not keeping good health. He submits that one of the relative of the applicant has residence close to the Kalyan Court and as and when she visits Kalyan Court, she can stay with that relative. He submits that though the respondent has also a relative at Shirdi, he cannot cause inconvenience to his relative for attending the proceedings at Rahata.

8. The respondent lastly submits that since the respondent is disputing the allegations of the applicant that her parents are not keeping good health, this court shall get the parents of the applicant examined by a doctor as may be appointed by this court and shall consider the correctness of the allegations made by the applicant.

9. The respondent submits that he does not agree with the views expressed by this court in case of **Jayshree Parmeshwar Patil** (supra). It is submitted by the respondent that he is now unemployed and if he is required to attend the proceedings at Ahmednagar, he may be physically assaulted by the applicant.

10. There is no dispute that the distance between the Kopergaon and Kalyan is about 215 km even according to the respondent. The respondent has not disputed that the applicant is unemployed. The objection of the respondent is that the applicant is educated and herself can attend the court proceedings filed by the respondent at Kalyan Court. On the other hand it is the case of the applicant that her parents are old age and are not in a position to accompany the applicant to attend the proceedings at Kalyan.

11. This court in case of **Jayshree Parmeshwar Patil** (supra) after adverting to the judgment of Supreme Court in case of **Sumita Singh vs. Kumar Sanjay, (2001)**

10 SCC 41 has held that in a proceedings instituted by the husband, the convenience of the wife should be looked at. This judgment of the Supreme Court and the judgment of this court in case of **Jayshree Parmeshwar Patil** (supra) has been followed by this court in catena of the decisions. Merely because respondent does not agree with the views expressed by this court and the Supreme Court, the judgment of this Court and the judgment of Supreme Court do not cease to be a precedent and are applicable and binding on this court.

12. Insofar as submission of the respondent that this court shall examine the parents of the applicant through a doctor to ascertain whether they are really keeping good health or not is concerned, I am not inclined to accept this submission of the respondent. The applicant has made such averments on oath in the miscellaneous civil application. The respondent has not produced any other proof in support of his allegation that the parents of the applicant are not keeping good health in support of his submission that the statements made by the applicant on oath in miscellaneous civil application are incorrect.

13. I am inclined to accept the submissions made by the learned counsel for the applicant that applicant and her parents are not keeping good health and her parents are old aged and are not able to attend the court proceedings at Ahmednagar.

14. Insofar as submission of the learned counsel for the respondent that he himself is unemployed at the moment and there is apprehension of any physical assault by the applicant is concerned, no such case is made out by the respondent. On the contrary it is alleged by the applicant that because of the physical assault upon her by the respondent and her parents, she was aborted.

15. In my view each and every objection raised by the respondent in the affidavit in reply and in his oral arguments made at the time of hearing are devoid of merits. I, therefore, pass the following order :-

- (a) Miscellaneous Civil Application No.190 of 2016 is made absolute in terms of prayer clause (b). Learned Civil Judge Senior Division Kalyan, District Thane is directed to transmit the papers and proceedings in Marriage Petition No.29 of 2016 to the learned Civil Judge Senior Division at Kopergaon Court, District Ahmednagar expeditiously.
- (b) The parties to this proceedings are directed to appear before the learned Civil Judge, Senior Division at Kopergaon Court, District Ahmednagar on 10th October, 2016.
- (c) The parties as well as the learned Civil Judge, Senior Division, Kalyan to act on the authenticated copy of this order.
- (d) No order as to costs.

[R.D. DHANUKA, J.]