

Mr.Ruturaj Pawar for Applicant

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CORAM: *G.S.KULKARNI, J*
DATE: 4TH MAY, 2016

P.C.

Not on Board.Taken on Board.

1. Heard learned counsel for the parties.
2. By this application under section 24 of the Code of Civil Procedure, 1908 the applicant-husband seeks transfer of custody petition bearing nos. D-94 of 2010, Divorce Petition No.A-1709 of 2012 from the file of the learned Principal Judge, Family Court Mumbai to any other Judge of the Family Court, Mumbai. A perusal of the Misc.Application and the documents as placed on record indicate that there is a chequered history of litigation between the parties. The applicant also appears to have approached this Court on earlier occasions. The proceedings as initiated earlier by the

applicant before this Court are as under :

(i) Misc.Civil Application No.191 of 2014 wherein the appellant had invoked the jurisdiction of this Court under section 24 of the Code of Civil Procedure, 1908 seeking transfer of matrimonial Petition from the Court (Family Court, Mumbai) to any other Family Court at Mumbai. The applicant had also filed four Civil Applications bearing Nos.2259 of 2014, 2012 of 2014, 3692 of 2014 and 1814 of 2014 before this Court relating to access to the child in the said proceedings. Misc.Civil Application no.191 of 2014 was filed on the apprehension that the applicant may not get justice from the Court where proceedings were pending. The opposition of the respondent-wife was that the said application was nothing but, another attempt on the part of the applicant in delaying the trial in the Matrimonial petition hearing of which was expedited. At the relevant time, the stage of the proceedings was cross-examination of the applicant which was pending since March 2014. The applicant had also made some

objectionable statements in the memo of the said Misc.Civil application. On behalf of the respondent-wife an objection was raised on the language and nature of the allegations as made against the learned Presiding Officer/Principal Judge, Family Court, Mumbai. This Misc.Civil Application was decided by a judgment and order dated 14th January 2015. The observations of the learned Judge in the said order will be of relevance in the present context which reads thus:

“19) *It is also to be noted that, with filing of the petition for divorce and the counter-claim also for divorce, the intention of the parties as regards continuing with the marital tie is loud and clear. The dispute remaining for judicial decision would be only of custody of the child, access to the child, maintenance of the child and alimony of the respondent. In such circumstances, when the applicant does not make himself available for cross-examination since the month of March, 2014 an inference can be safely drawn that the applicant has merely presented a facade so as to justify the apprehension.*

20) *Thus, taking an overall view of the matter, in my opinion, no case is made out by the applicant for transfer of the proceedings. Hence, the Miscellaneous Civil Application is dismissed.”*
(Emphasis supplied)

(ii) Another application which was filed by the applicant was Misc.Civil Application (St) No.34910 of 2015 which was

decided by an order dated 23rd December, 2015. Again by this application filed under section 24 of the Code of Civil Procedure, 1908 the applicant had sought transfer of the proceedings filed by him before the Family Court at Bandra to the Family Court at Thane and sought clubbing of Petition No.B-01 of 2013 pending before the Family Court at Thane. This Misc.Civil Application came to be rejected with costs of Rs.25,000/-. The observations of this Court in Misc.Civil Application (St) No.34910 of 2015 in disposing of this petition also are required to be noted which reads thus:

“19. It is not in dispute that though this Court has directed the expeditious disposal of the matrimonial proceedings filed by the applicant expeditiously, the cross examination of the applicant is still going on. The applicant has proposed to examine 11 more witnesses in the said proceedings at Family Court at Bandra which itself shows the intention of the applicant to somehow harm the respondent and the child. In my view even on this ground, the applicant has not made out case for transfer of the proceedings from Family Court at Bandra to the proceedings at Family Court at Thane. The respondent has been staying with her parents at Dadar and thus Family Court at Bandra is more convenient to the respondent wife. The Supreme Court as well as this court in catena of decisions has taken a view that while considering an application for transfer under section 24 of the Code of Civil Procedure, convenience of the wife has to be considered by the court.28. There is no dispute that the respondent has been staying with her parents since 2010. The parents of the

respondent have already retired. The child of the applicant and the respondent is looked after by the parents of the respondent and also by the respondent after she returns to her parents house after her service hours. The access of the child is also provided to the applicant at Dadar.

“29. A perusal of the record clearly indicates that the intention of the applicant is somehow to delay the proceedings on one or the other ground. The real purpose of the applicant filing this application for transfer of these proceedings from Bandra to Thane appears to harass the respondent and her child.

30. In my view thus no case is made out for transfer of the proceedings as prayed in the miscellaneous civil application. Application is devoid of merits and is accordingly dismissed with cost quantified at Rs.25,000/- which shall be paid by the applicant to the respondent within two weeks from today.”

(iii) The applicant then filed Contempt Petition No.404 of 2012 in this Court. The applicant had also filed Writ Petition bearing No.3692 of 2014 and had also taken out a Civil application no.3098 of 2014 in the said writ petition on which the learned single judge passed an order dated 4th December 2015 wherein this Court recorded the statement as made on behalf of the respondents that parenting plan for the child has been filed and that the respondent inter alia would offer the applicant access on 20th and 27th December 2015. It was

directed that the Family Court shall proceed with the main proceedings on the basis of the defence of the respondent wife which was struck off. Writ Petition No.3692 of 2014 with Civil Application No.3098 of 2015 were disposed of by this Court by an order dated 5.2.2016 wherein the Court had recorded that both parties have filed their parenting plans before the Family Court, at Mumbai and therefore, it was not necessary to continue with the writ petition or the civil application. It was observed that interest of justice would be met if the Family Court is directed to hear the parties and make appropriate order that is in regard to the parenting plan submitted by both the parties. This exercise was directed to be completed within six weeks.

3. It appears that in pursuance of the orders passed by this Court on 5th February 2015 in Writ Petition No.3692 of 2014 the learned Principal Judge of the Family Court had taken up Petition No.D-94 of 2010 alongwith Petition No.A-1709 of 2012 to consider

the parenting plan. By a reasoned order dated 18th March, 2016 the parenting plan of both parties was rejected and it was observed that the Court shall decide the issue of access, Custody parenting plan with regard to the minor child on its own merits. The learned Judge in passing the said order had made the following observations in

“6. So, considering the above circumstances and in view of directions of the Hon'ble High Court, I have reached to the conclusion that the draft parenting plans of both the parties cannot be accepted by this Court in view of the legal lacunas in it. Secondly the issue of passport also which will naturally be decided on merits of the case because the trial is now at the fag end as the cross examination of the respondent is in progress and father her witnesses are over, the final judgment shall be delivered at the earliest. So, issue of access, custody, passport will very well be decided in the final judgment. At this stage as regards the prayer of implementation of parenting plan, I have reached to the conclusion that the said prayer needs to be rejected.

So, in the result, I proceed to pass the following order;

ORDER

- 1) *The Draft parenting plans of both the parties are rejected.*
- 2) *The Court shall decide the issue of access, custody, passport with regard to minor child, on merits.”*

*S/d Principal Judge, Family
Court, Mumbai*

4. Learned counsel for the applicant submits that the applicant is now appearing in person before the Family Court. On 22nd April, 2016 the applicant moved an application praying that

the Court shall recuse itself from adjudicating the said matrimonial disputes and in the capacity of the Principal Judge transfer the said case to any other Court. The applicant had contended in the said application that though the applicant did not express his grievance against the Court but, he submitted that inspite of various efforts there is no rapport built up for parenting plan of son Atharva and the learned Presiding Officer of the Court. This application was filed when the Principal Judge of Family Court was seized with the proceedings of the main petition which was to be disposed of expeditiously and pertinently cross-examination had commenced in 2014 and that adjudication could not be completed even after a lapse of two years. This application seeking recusal came to be rejected by the learned Principal Judge by an order dated 22nd April, 2016. In the said order, the learned Judge categorically observed that the application of the petitioner seeking transfer of the proceedings from the Court of Principal Judge were twice rejected by this Court It was observed that the main petitions were required to be decided in a time bound manner and that the dispute being whether there was

delaying the proceedings by avoiding cross-examination of the respondent by moving such an application. It was observed that the applicant is taking all efforts to see that the matter does not proceed further.

5. Learned counsel for the applicant in support of the present application has drawn my attention to the various facts and more particularly as contained in para 22 of this application which according to him are germane to support the prayers as made in the present application for transfer of the proceedings to any other Family Court at Mumbai. A perusal of the contents of paragraph 2 clearly indicate that it is the applicant's version of the proceedings before the learned Principal Judge of Family Court. The contents also show that some averments are in the nature of allegations against the Principal Judge. A grievance is also made in this para that the learned Judge was proceeding in the matter on day-to-day basis and had refused adjournments. The nature of the grievances which are made in para 22 clearly indicate that if the same are accepted the it

would virtually render any Presiding Officer of the Family Court impossible to adjudicate the matrimonial disputes. It is a matter of common knowledge that the issues before the Family Court are delicate issues. The role of the Presiding Officer of the Family Court is very special and undoubtedly requires a participatory role. However, only because a assertion/version of one of the litigant is not accepted by the learned Presiding Officer, that does not mean that the said Presiding Officer is not discharging his judicial functions satisfactorily and the matter is required to be transferred to another Court. The endeavour of the learned Presiding Officer of the Family Court would be to see that matrimonial disputes and issues pertaining to custody of children are decided in an effective and expeditious manner. Any attempt on the part of a litigant which the Court in its judicial opinion considers it to be not bonafide and is aimed to delay the adjudication process, in such eventuality, the learned Presiding Officer of the Court is undoubtedly required to take a firm view of such objectionable conduct of a litigant. The course of justice on which the Court proceeds cannot be interfered by

a party for a personal vendetta. This would not only delay adjudication but would also cause a serious prejudice to the opposite party. The wheels of justice need to proceed and firmly by removing such hurdles that would be created by parties who wish to delay the proceedings by accepting various methods.

6. The present case appears to be a classic case where a perusal of the record indicates that the applicant has left no stone unturned to see that the matrimonial proceedings do not attain finality by an expeditious adjudication which is the endeavour of the learned Principal Judge. It also appears that the applicant has grievances on a number of issues and also the applicant appears to be habitual in initiating proceedings which definitely has resulted delaying the matters before the Family Court. The approach of the applicant appears to be most unreasonable. The Court cannot be unmindful that large number of proceedings were initiated by the applicant and that for all these years on account of such litigious tendency on the part of the applicant the proceedings before the

Family Court have till date remained pending. The vehemence in the submissions as made by the learned counsel for the applicant on the basis of averments in the application in my opinion are without any foundation.

7. Learned counsel for the respondent-wife submits that the respondent is separated from the applicant since September 2010 and is staying with her parents. However, the applicant-husband who is stated to be running an industry has not paid any amount towards maintenance to the respondent-wife and it is this situation, the wife is defending all these proceedings. Learned counsel for the respondent-wife submits that apart from various proceedings which are initiated by the applicant, this is the third Misc.Civil Application filed by the applicant seeking transfer of the proceedings. It is submitted that the intention of the applicant is clear that he wants to delay the adjudication of the principal proceedings pending before the Family Court.

8. There is much substance in the contentions as urged on behalf of the respondent. The documents as placed on record and various orders which are passed by this Court in earlier Misc.Civil Applications and a perusal of the present application does not inspire any confidence that this Court should exercise discretionary relief as prayed for in this application by the applicant. The stage of the proceedings before the Family Court as on date, is that evidence of the parties is being recorded and thereafter the matter would be set down for final hearing. If this is the position transfer of the proceedings before any other Court would also not serve any purpose and in fact it would be counter-productive.

9. In the light of the above observations, and considering in the facts and circumstances of the case, as also taking a overall view of the matter, I am of the clear opinion that there is no case made out by the applicant-husband for any reliefs as prayed for in this application.

10. Misc.Civil Application is accordingly rejected with costs of Rs.25,000/- to be paid by the applicant to the respondent within a period of two weeks from today.

G.S.KULKARNI, J

