

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

MISC. CIVIL APPLICATION NO.174 OF 2014

Baljeet Kaur Babrah
alias Baljeet Kaur Rainu

.. Applicant

Vs.

Harjeet Singh Babrah

.. Respondent

Mr.Kamlesh P. Mali for Applicant.

Mr.Rakesh B. Sawant i/by Ms.Anita Manjalkar for Respondent.

CORAM : R.D. DHANUKA, J.

DATE : 5th October 2016

P.C.

. By this miscellaneous civil application filed under Section 24 of the Code of Civil Procedure, 1908, the applicant-wife seeks transfer of the Petition No.A-1965 of 2014 filed by the respondent-husband before the Family Court-4, Bandra, Bombay to the Court of Civil Judge, Senior Division, Kalyan, District Thane.

2. The applicant and the respondent were married on 18th December 2012 at Ulhasnagar Gurudwara. There are two children born out of the said wedlock. Son was born on 27th June 2007 and daughter was born on 9th April 2012. It is the case of the applicant that after her marriage with the respondent, she was staying with the respondent. According to the applicant, the respondent has settled his business well. There are two maids working in the Bungalow of the respondent. In the month of November 2012, father of the applicant had expired. It is the case of the applicant that after demise of father of the applicant, brother and widowed mother of the applicant were not able to

meet with the demands of the respondent and his father and they started harassing and physically abusing the applicant. It is the case of the applicant that on 14th July 2014, she was brutally assaulted and strangled by the respondent and his father. The applicant was forced to attempt suicide and then was admitted in the hospital. It is the case of the applicant that after discharge of the applicant from the hospital, the respondent and his father forced the applicant to go with her brother at his place. On 27th July 2014, when the applicant with her brother and some relatives came to Chembur to drop her at her matrimonial home, she was directly attacked by the father in law of the applicant.

3. On 30th July 2014, the respondent filed divorce proceedings (Petition No.A-1965 of 2014) along with various applications before the Family Court No.4, Bandra for seeking divorce on the ground of cruelty against the applicant. Writ of summons was issued to the applicant on 8th August 2014.

4. Learned counsel appearing for the applicant invited my attention to various averments made in the miscellaneous civil application and also annexures to the application. He submits that the applicant is now 36 years old alone lady with two minor children aged 9 years and 4 years. He submits that the applicant would not be able to travel a distance of about 56 kms for attending the Court proceedings before the Family Court at Bandra from Ambernath. If the proceedings are transferred to the Court of Civil Judge, Senior Division, Kalyan which is only about 15 minutes travelling from Ambernath, it would be convenient for the applicant to attend the said proceedings. He submits that her

brother and mother being very old cannot accompany her to travel to Kalyan. He submits that the applicant has to take her children with her all the time. The applicant is at present unemployed and cannot afford to bear travel expenses. He submits that the respondent on the other hand being a wealthy person can come to Kalyan to attend the Court proceedings if the proceedings are transferred. Learned counsel for the applicant submits that the applicant has also filed proceedings under the provisions of the Domestic Violence Act, 2005 before the Court of Judicial Magistrate, First Class, Ulhasnagar against the respondent. He submits that he has no objection if those proceedings filed by the applicant are also transferred to the appropriate Court at Kalyan. It is submitted by the learned counsel for the applicant that in view of internal dispute between the sister in law of the applicant with her which arose in view of the complaint filed by the respondent before the concerned police station, the applicant had to shift from her mother's place of residence to another place at Ambernath. Since last more than three months, the applicant has been staying separately with her two children.

5. Learned counsel for the applicant states that the applicant is ready and willing to stay with the respondent even today if he is willing to permit the applicant to stay in his house as his wife.

6. Learned counsel appearing for the respondent, on the other hand, submits that the respondent has filed custody petition in the divorce proceedings (Petition No.A-1965 of 2014) filed by him before the Family Court at Bandra. He submits that as a counter blast to the divorce proceedings filed by the respondent, the applicant has now filed

proceedings under the provisions of the Domestic Violence Act, 2005 in the Court at Ulhasnagar. He submits that the applicant has been deliberately delaying the hearing and outcome of the petition filed by the respondent for custody of the children on one or the other grounds. He submits that in view of the strained relationship, the respondent is not agreeable to permit the applicant to return and stay with him. It is submitted by the learned counsel for the respondent that the respondent is ready and willing to pay taxi fare to the applicant on each date of hearing of the proceedings at Bandra.

7. Learned counsel for the respondent placed reliance on the judgment of this Court in the case of ***Smt.Asha @ Deepa Ramchandra Sharma Vs. Shri Ramchandra Sharma***, reported in **1997 [99(2)] Bom.L.R. 55** and in particular paragraph 20 thereof. He submits that since the main ground of filing this miscellaneous civil application is that she is unemployed and she is not able to afford travel expenses, on that ground, the proceedings filed by the respondent cannot be transferred. Learned counsel for the respondent placed reliance on the judgment of the Supreme Court in the case of ***Anindita Das Vs.Srijit Das***, reported in **(2006) 9 SCC 197** and in particular paragraphs 3 to 7 thereof and would submit that merely because the applicant is a woman, she cannot take an advantage of leniency shown to ladies by the Court. He submits that since the respondent is ready and willing to pay all expenses on travelling of the applicant, this Court cannot transfer the proceedings filed by the respondent to the appropriate Court at Kalyan.

8. There is no dispute that out of the wedlock between the

applicant and the respondent, two children are begotten. Son is about 9 years old whereas the daughter is about 4 years and 6 months. The applicant is unemployed. There is no dispute that the respondent is a wealthy person and has deployed number of servants. The distance between Bandra and Ambernath is about 65 kms. The applicant has been staying separately for last three months with her children. The mother along with brother and sister in law of the applicant are staying separately. In view of the complaint made by the respondent, relationship between the applicant and her brother are also strained. The applicant is not able to travel with her children for attending the Court proceedings at Bandra from Ambernath. The applicant has also alleged incidence of assault against the respondent and his father.

9. In so far as the judgment of this Court in the case of ***Smt.Asha @ Deepa Ramchandra Sharma (supra)*** relied upon by the learned counsel for the respondent is concerned, this Court had considered the situation where the wife had filed the proceedings for transfer of the proceedings filed by the respondent on the ground of financial problem and the husband showed his readiness and willingness to meet all the expenses which may be incurred by the wife in travelling. This Court has accordingly held that if the inconvenience caused to the wife for undertaking journey to the place where proceedings are pending is mainly financial and if the husband is prepared to meet the journey expenses as well as expenses of lodging and boarding without there being anything more, a case for transfer may not be justified. However, in the facts of this case, the applicant has not applied for transfer of the proceedings merely on the ground of financial problem but also on

various other grounds including the ground that two children cannot be left alone at home and cannot be at the same time accompanied with her while attending the proceedings at Bandra. The judgment of this Court in the case of ***Smt.Asha @ Deepa Ramchandra Sharma (supra)*** is thus clearly distinguishable in the facts of this case and does not assist the case of the respondent.

10. In so far as the judgment of the Supreme Court in the case of ***Anindita Das Vs.Srijit Das (supra)*** relied upon by the learned counsel for the respondent is concerned, the Supreme Court has made an observation that a large number of transfer petitions are now filed by women taking advantage of the leniency shown by this Court. Supreme Court has accordingly held that each petition is required to be considered on its own merits. Court has to consider the situation that the wife has a small child and that there is nobody to keep her child. It is held that the child in that case, is six years old and there were grandparents available to look after the child. The respondent was willing to pay all expenses for travel and stay of the petitioner and her companion for every visit when the petitioner was required to attend the court at Delhi. Supreme Court observed that the ground that the petitioner had no source of income is adequately met.

11. In this case, the applicant is staying with her two minor children. The relationship between the applicant and her brother are strained because of the complaint filed by the respondent against her brother. The judgment of Supreme Court in the case of ***Anindita Das Vs.Srijit Das (supra)*** is thus clearly distinguishable in the facts of this case and does not assist the case of the respondent.

12. In the catena of decisions of the Supreme Court and the High Court after the judgment of the Supreme Court in the case of **Anindita Das Vs.Srijit Das (supra)** which are adverted by this Court, it has been consistently held that the convenience of the wife has to be considered by the Court while considering application under section 24 of the Code of Civil Procedure, 1908. I am respectfully bound by the judgment of the Supreme Court and this Court which are applicable to the facts of this case.

13. I am thus not inclined to accept the submission of the learned counsel for the respondent that since his client is ready and willing to pay all expenses of travelling to the applicant, the application for transfer shall not be considered. In my view, the applicant has made out a case for transfer of the Petition No.A-1965 of 2014 filed by the respondent-husband before the Family Court-4, Bandra, Bombay to the Court of Civil Judge, Senior Division, Kalyan, District Thane.

14. The applicant is though ready and willing to stay with the respondent, the respondent has refused to permit the applicant to stay with him. In my view, in these circumstances, the respondent cannot oppose the application for transfer of the petition filed by the applicant.

15. I therefore pass the following order :-

- (i) Miscellaneous civil application is made absolute in terms of prayer clause (a);
- (ii) The Family Court-4, Bandra is directed to transmit the papers and proceedings of the Petition No.A-1965 of 2014 to the Court of Civil Judge, Senior Division, Kalyan, District Thane expeditiously;

- (iii) Both the parties are directed to appear before the Court of Civil Judge, Senior Division, Kalyan, District Thane on 24th October 2016;
- (iv) There shall be no order as to costs.

16. Application for stay of operation of this order made by the learned counsel for the respondent is rejected. Parties as well as the Family Court-4, Bandra to act on the authenticated copy of this order.

R.D. DHANUKA, J.