

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

MISC. CIVIL APPLICATION NO.222 OF 2015

Shubhada Yeshwant Surve .. Applicant
Vs.
Krupal Maniar & Anr. .. Respondents

Mr.N.R. Tiwari i/by Mr.Devendra Sonawane for the applicant.
Mr.Vijay Singh for the respondents.

CORAM : R.D. DHANUKA, J.
DATE : 4th January 2016

P.C.

. By this miscellaneous civil application filed under Section 24 of the Code of Civil Procedure, 1908, the applicant seeks transfer of the Suit No.3462 of 2008 from the City Civil Court for Greater Bombay to the City Civil Court, Borivali Division at Dindoshi Branch, Goregaon. Some of the relevant facts for the purpose of deciding this application are as under:-

2. The applicant is a senior citizen and is 75 years old. The respondent nos.1 and 2 are the plaintiffs in Suit No.3462 of 2008. The said suit was originally filed in this Court and subsequently transferred to the City Civil Court for Greater Bombay. The applicant had applied for transfer of the said proceedings to the City Civil Court, Borivali Division at Dindoshi Branch, Goregaon. The said application was, however, rejected by the City Civil Court for Greater Bombay on 30th July 2015 on the ground that the said proceedings could be transferred only when the plaintiffs could have given consent. Since the plaintiffs

did not give consent for transfer of the said proceedings, the said proceedings could not be transferred from the City Civil Court for Greater Bombay. The applicant had annexed medical certificate at Exhibit-E to the application which indicates that the applicant is not keeping good health. The applicant has been staying at Kandivali. The respondents are also having place of residence at Kandivali.

3. Learned counsel appearing for the respondents, on the other hand, submits that the applicant though is 75 years old can pursue these proceedings through her son who can attend the proceedings instead of seeking transfer of the proceedings to the City Civil Court, Borivali Division at Dindoshi Branch, Goregaon.

4. Learned counsel appearing for the applicant states that the applicant may also be required to examine the witnesses before the trial Court and since both the parties are staying at Kandivali, it would be appropriate if the said proceedings are transferred from the City Civil Court for Greater Bombay to the City Civil Court, Borivali Division at Dindoshi Branch, Goregaon.

5. In my view, there is no substance in the objection raised by the learned counsel for the respondents that the applicant though old in age can represent through her son and the proceedings, thus, could not be transferred from the City Civil Court for Greater Bombay to the City Civil Court, Borivali Division at Dindoshi Branch, Goregaon. The applicant may also be required to examine as a witness.

6. Be that as it may, since both the parties are staying at Kandivali and in ordinary course, the proceedings would have been transferred to the City Civil Court, Borivali Division at Dindoshi Branch, Goregaon but the same were not transferred in view of the objection raised by the respondents for want of consent of the original plaintiffs, in my view, the applicant has thus made out a case for transfer of the proceedings from the City Civil Court for Greater Bombay to the City Civil Court, Borivali Division at Dindoshi Branch, Goregaon.

7. I therefore pass the following order :-

- (a) Misc. Civil application is allowed in terms of prayer clause (a);
- (b) City Civil Court for Greater Bombay is directed to transfer the proceedings of Suit No.3462 of 2008 to the City Civil Court, Borivali Division at Dindoshi Branch, Goregaon for hearing and final disposal expeditiously;
- (c) Both the parties are directed to co-operate with each other and with the learned Judge of City Civil Court, Borivali Division at Dindoshi Branch, Goregaon in expeditious disposal of the proceedings;
- (d) Misc. civil application is disposed of in aforesaid terms;
- (e) There shall be no order as to costs.

R.D. DHANUKA, J.