

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

Appeal from Order NO. 964 OF 2014
IN
M.J.PETITION NO.2554 OF 2009

Shri Manish Dattatray Salvi ...Appellant
Versus
Smt. Bhakti Manish Salvi ...Respondent

WITH
CIVIL APPLICATION NO.1171 OF 2014

Mr.Manish D.Alwe i/b. Ms.Bhavana Y. Tandel & Ms.Sharmila D.Alwe, for the Appellant.

Ms.Prabha Uday Badadare, for Respondent No.1.

CORAM: G. S. KULKARNI, JJ

DATED: 20th April, 2016

PC:-

1. Heard the learned Counsel appearing for the parties. This appeal filed by the Husband challenges the order dated 2nd September,2014 passed by the learned Principal Judge, Family Court at Mumbai in Petition No.A-2554 of 2009 whereby the learned Judge has directed that the said Petition be returned alongwith the entire record and proceedings to the Appellant for presenting it before the competent Court having jurisdiction viz. the Civil Court at Palghar, Thane or Pune for concluding the Trial as per the requirement of Section 19 of the Hindu

Marriage Act,1955.

2. The facts as can be seen from the impugned order are quite peculiar. The impugned order came to be passed at the fag end of the proceedings and more particularly when the petition was closed for final judgment. At which point of time, the learned Judge having perused the evidence and the facts of the matter, noticed that the Family Court, Mumbai would lack territorial jurisdiction to entertain the petition in question. The learned Judge has given elaborate reasons and applying the requirements under Section 19 of the Hindu Marriage Act, 1955 has passed the impugned order returning the Petition to be presented before the appropriate Court. Having perused the impugned order and having heard the parties on this appeal, I am of the opinion that the conclusion as arrived at by the learned Trial Judge is quite appropriate in law inasmuch as the Family Court at Mumbai would not have territorial jurisdiction to adjudicate the petition of the Appellant.

3. At today's hearing the grievance of the Appellant was only that a substantial time has been spent in pursuing the proceedings before the Family Court at Mumbai and that no further prejudice should be caused to the parties on this dispute on such fresh presentation of the Petition before the new Court. At the same time, learned Counsel for the Appellant also agrees that it would be in the interest of the parties that the

petition alongwith the entire proceedings be transferred to the appropriate Court so that there is no prejudice which is caused to either of the parties on the issue of jurisdiction of the Court. The learned Counsel for the parties have fairly stated that their respective clients would agree to the jurisdiction of the Civil Court at Palghar for the matrimonial dispute to be decided in the Petition in question. This would also comply with the requirement of Section 19 of the Hindu Marriage Act,1955.

4. In the peculiar facts of the case, it would be desirable that the parties do not waste further time. The evidence in the dispute is already recorded and if the record of the entire proceedings is forwarded to the Court of the Civil Judge, Senior Division at Palghar, what would remain is only final arguments/submissions on the petition to be advanced on behalf of the parties.

5. In the interest of justice, it is, therefore, desirable that the parties approach the Court of the Civil Judge, Senior Division at Palghar for final adjudication of the dispute in Petition No.A-2554 of 2009. Hence, the following order:-

ORDER

(i) The record and proceeding of the Petition No.A-2554 of 2009 on the file of the Family Court, Mumbai, are directed to be transferred to the

Court of Civil Judge, Senior Division, Palghar, District Thane, which shall be done within a period of two weeks from today.

(ii) Office is directed to forward this order to the Registrar, Family Court at Mumbai for appropriate compliance.

(iii) An intimation of transfer of the proceedings be given to the respective parties by the Registrar of Family Court at Mumbai.

(iv) The parties shall approach the Court of the learned Civil Judge, Senior Division, Palghar, Dist.Thane on 4 May 2016 on which day the learned Judge shall fix a convenient date for final hearing of the Petition. The learned Civil Judge, Senior Division shall endeavour to dispose of the Petition on or before 30th July,2016.

(v) Any interim order which was in operation till passing of the impugned order shall continue to operate till the final disposal of the Petition by the learned Civil Judge, Senior Division, Palghar, Dist.Thane.

5. The Appeal from Order is disposed of in the above terms. No order as to costs.

6. As the Appeal from Order itself is disposed of, the pending Civil Application does not survive and is accordingly disposed of.

(G. S. KULKARNI,J.)