

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****MISC. CIVIL APPLICATION NO. 242 OF 2015****Kavita Chandrashekhar Harwande** Applicant**VERSUS****Chandrashekhar Krishnaji Harwande** Respondent

Mr.Omkar Nagwekar for the Applicant.

Mr.Madhav Jamdar for the Respondent.

CORAM : R.D. DHANUKA, J.**DATED : 16th FEBRUARY, 2016****P.C.**

By this miscellaneous civil application, the applicant seeks transfer of Hindu Marriage Petition No.59 of 2014 filed by the respondent against the applicant in the Court of learned Civil Judge Senior Division Ratnagiri inter alia praying for divorce on the ground of adultery and other various grounds against the applicant to the Court of Civil Judge Senior Division Ichalkaranji, District Kolhapur. The applicant and the respondent were married on 22nd June, 1997. There are two sons born out of the said wedlock. The elder son is about 13 years old and younger son is about 11 years old and they are admittedly in the custody of the respondent.

2. It is the case of the applicant that the father of the applicant expired in the year 2007 and since then is totally dependent upon her mother. The applicant is working as pern winder on power loom on daily wages basis and is getting Rs.150/- per day as daily wages. The applicant started working in the garment company and is getting monthly salary of Rs.6000/-.

3. It is the case of the applicant that since there was no earning member to support the applicant financially, the applicant started working. According to the applicant her brothers are living separately and never supported the applicant and her mother. The distance between the Ichalkaranji and Ratnagiri is 150 km. It is the case of the applicant that there is only one bus service in the morning at about 6.30 a.m. from Ichalkaranji to Ratnagiri.

4. The applicant has filed an application for maintenance and for expenses in the Court of Ichalkaranji which is rejected.

5. Learned counsel appearing for the applicant submits that since the applicant had not disclosed the income of the applicant in the earlier miscellaneous civil application filed by the applicant (Stamp No.12411 of 2015), this court had granted liberty to the applicant to withdraw the said application with liberty to file a fresh application on the same cause of action. He submits that it is causing inconvenience to the applicant to travel from Ichalkaranji to Ratnagiri for defending the proceedings filed by the respondent and thus seeks transfer of the said proceedings from the Court of Civil Judge Senior Division Ratnagiri to the Court of Civil Judge Senior Division Ichalkaranji. Learned counsel for the applicant placed reliance on the judgment of this court in case of **Megha Madan Nayak vs. Madan Rustumrao Nayak, 2013(4) Bom.C.R.211** and would submit that while considering the application under section 24 of the Code of Civil Procedure, 1908 for transfer, convenience of the applicant wife is required to be looked into. Reliance is also placed on the judgment of Supreme Court in case of **Sumita Singh vs. Kumar Sanjay & anr., (2001) 10 SCC 41** in support of the same submission.

6. Mr.Jamdar, learned counsel appearing for the respondent on the other hand submits that though the applicant was working and was earning a salary of Rs.6,000/- per month even according to the applicant, such facts were suppressed in the earlier miscellaneous civil application filed by the applicant. When all these facts were brought to the notice of this Court by the respondent, the applicant withdrew the said application and sought liberty to file fresh miscellaneous civil application. My attention is invited to the application for seeking custody of the two sons in which such averments were made.

7. It is submitted by the learned counsel that the applicant had made statement before the concerned police station that she left the house with another person and had stayed with him in a lodge. He submits that the respondent has filed a petition against the applicant for seeking divorce on the ground of adultery. It is submitted that since 2013 when the applicant had left the matrimonial house, the respondent is looking after those two sons, who are studying in a private school. He submits that the respondent also is working as a waiter in a restaurant. It is submitted that the applicant has three brothers who are earning sufficiently and can assist the applicant for looking after the mother and/or for accompanying her to attend the court proceedings. He submits that the applicant has already filed a written statement in the divorce proceedings filed by the respondent.

8. My attention is also invited to the averments made in the affidavit in reply to the effect that two of the brothers out of three are staying with the applicant in the same house. My attention is also invited to the affidavit in rejoinder and more particular paragraph (2) and it is submitted that the denial of the applicant to the said averments of the respondent is totally vague.

9. Learned counsel distinguished the judgment of this court in case of **Megha Madan Nayak** (supra) and in case of **Sumita Singh** (supra). It is submitted that the Supreme Court in the said judgment of **Sumita Singh** (supra) has considered an application under section 25 of the Code of Civil Procedure where the proceedings were sought to be transferred from Ara, Bhojpur to Delhi which was about 1100 km from Delhi. He submits that the facts before the Supreme Court in case of **Megha Madan Nayak** (supra) were totally different and are distinguishable in the facts of this case.

10. Learned counsel for the applicant in rejoinder submits that the statement made if any before the police officer insofar as allegations of adultery are concerned are not binding on the applicant and in any event are not relevant for the purpose of deciding this application for transfer of the proceedings filed by the respondent from the Court of Civil of Ratnagiri to the Court of Ichalkaranji. Upon this court making an inquiry about the place of residence of the two of the brothers of the applicant, learned counsel for the applicant submits that they are staying in the same locality but are not providing any financial assistance to the applicant.

11. There is no dispute that the applicant and her mother are working. The applicant has three brothers, two of the brothers are even according to the applicant are staying in the same locality and are earning sufficiently. There is no dispute that two sons who are aged 14 years and 12 years respectively are being looked after by the respondent exclusively who are studying in a private school. The applicant is not contributing any amount for upliftment and care of those two children. The respondent is also working at present as a waiter in a restaurant at Ratnagiri.

12. A perusal of the earlier miscellaneous civil application filed by the applicant indicates that the applicant did not disclose before this court that she was working. On the contrary an averment was made in the civil application that she was unemployed. The applicant sought liberty to withdraw earlier miscellaneous civil application only after the respondent brought to the notice of the court that she was working and was earning salary of Rs.6,000/- per month.

13. The distance between Ratnagiri and Ichalkaranji is hardly 150 km. The applicant can always seek assistance of her brothers to assist her to attend the court proceedings. There is no necessity for the applicant to remain present all throughout to attend the court proceedings when the matter is on board before the learned judge in the court at Ratnagiri.

14. Insofar as judgment of this court in case of **Megha Madan Nayak** (supra) relied upon by the learned counsel for the applicant is concerned, the facts before this court in the said judgment are totally different and are clearly distinguishable. The said judgment in the facts of this case would not assist the case of the applicant.

15. Insofar as judgment of Supreme Court in case of **Sumita Singh** (supra) relied upon by the learned counsel for the applicant is concerned, the distance between Bhojpur and Delhi was around 1100 km. In the facts of this case even according to the applicant, the distance between Ichalkaranji and Ratnagiri is not more than 150 km. The said judgment was delivered by the Supreme Court while considering an application under section 25 of the Code of Civil Procedure. The said judgment of Supreme Court thus in my view does not assist the case of the applicant.

16. Insofar as statement made by the applicant before the police station that she had left the matrimonial house with another person and was staying in a lodge is concerned, this court need not make any observation about such statement alleged to have been made by the applicant. The respondent has already made an allegation of adultery against the applicant which is subject matter of the marriage petition filed by the respondent. The appropriate court will look into those allegations as and when the trial is conducted. In my view the applicant has not made out any case for transfer of the proceedings filed by the respondent. Miscellaneous civil application is accordingly rejected. No order as to costs.

17. At this stage learned counsel appearing for the applicant states that the respondent be directed to pay some reasonable amount towards transportation of the applicant from Ichalkaranji to Ratnagiri. Mr. Jamdar learned counsel for the respondent states that the similar application for making a provision for payment for transportation made by the applicant has been already rejected by the appropriate court. I am thus not inclined to consider this request of the applicant at this stage.

[R.D. DHANUKA, J.]