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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO.167 OF 2016

Parag V. Deshpande	...Applicant
V/s.	
Namita P. Deshpande	...Respondent

Mr.Rahul Karnik for the Applicant.

Mr.Abhijit Kandarkar for the Respondent.

CORAM : R.D. DHANUKA, J.
DATE : 29TH NOVEMBER, 2016.

P.C. :-

1. By this application filed under section 24 of the Code of Civil Procedure, 1908, the applicant seeks retransfer of Petition No.A410 of 2013 (A-359 of 2013) which was transferred from the Family Court, Aurangabad to the Family Court, Bandra, Mumbai. There is no dispute that the respondent herein had filed Miscellaneous Civil application in this Court (76 of 2013) *inter-alia* praying for transfer of the petition filed by the applicant herein in the Family Court, Bandra, Mumbai to the Family Court, Aurangabad. By an order dated 12th August, 2013 passed by this Court, this Court accepted the said plea of the respondent herein and more particularly

that the respondent herein was residing in Aurangabad after separation between the parties and that the competent Court at Aurangabad would have territorial jurisdiction to try the petition filed under section 19 of the Hindu Marriage Act also. It was a specific plea of the respondent (original applicant) that she was required to go from Aurangabad to Mumbai without any assistance of the family persons, who could not come down to Mumbai to accompany her.

2. Pursuant to the said order dated 12th August, 2013 passed by this Court, the said proceedings filed by the applicant husband were transferred to the competent Court at Aurangabad.

3. The applicant has filed the present proceedings for retransfer of the proceedings filed by the applicant which were transferred to the Family Court, Aurangabad on various grounds and mainly on the ground that the respondent herein has been staying in Mumbai.

4. On 5th May, 2016, my brother Judge G.S. Kulkarni, J. passed a detailed order and observed that the fact that the respondent herein has been working at Mumbai, is not disputed by the respondent. This Court directed the respondent to file an affidavit in the present application.

5. Learned counsel appearing for the applicant invited my attention to the averments made by the respondent in the

Miscellaneous Civil Application No.76 of 2013 filed before this Court. He submits that it was her own case that the respondent on the date of filing of the said miscellaneous civil application was staying with her parents at Aurangabad and it was not possible for her to attend the proceedings in Family Court, Mumbai filed by the applicant herein. He submits that admittedly since the respondent has been staying and working in Mumbai, the proceedings filed by the applicant which are transferred to Aurangabad shall be retransferred to Mumbai.

6. Learned counsel appearing for the respondent on the other hand though does not dispute that the respondent has been working and residing in Mumbai now submits that the applicant has been threatening the respondent in respect of which various complaints have been filed by the respondent against the applicant. He submits that this Court while passing the earlier order on 12th August, 2016 had also considered the case of the applicant that the respondent herein was staying in Mumbai and thus the proceedings which are already transferred to Family Court, Aurangabad cannot be retransferred to Mumbai.

7. A perusal of the averments made by the respondent herein in Miscellaneous Civil Application No.76 of 2013 clearly indicates that the respondent herein had given her residential address of

Aurangabad. It was averred in the said application that the respondent herein hails from Aurangabad and had been staying with her parents at Aurangabad. It was not convenient for her to visit Mumbai for attending the proceedings filed by the applicant herein.

8. A perusal of the order passed by the Court on 12th August, 2013 clearly indicates that this Court accepted the plea of the respondent herein that she was residing in her parents home at Aurangabad after separation between the parties and she was required to come from Aurangabad to Mumbai without any assistance from her family members to accompany her. It is not the case of the respondent herein that this Court wrongly recorded in the said order that she was staying in Aurangabad with her parents and was not able to attend the proceedings in Mumbai from Aurangabad.

9. I am thus not inclined to accept the submissions of the learned counsel for the respondent that this Court while passing the said order on 12th August, 2013 had considered the averments made by the applicant herein that the applicant was residing in Mumbai. Upon raising a query to the learned counsel for the respondent herein, he is not in a position to make a statement that his client was all through out residing in Mumbai including the date on which this Court passed an order on 12th August, 2013. He is also not in a position to make any statement that his client has made a false

statement in Miscellaneous Civil Application No.76 of 2013.

10. In view of the fact that both the parties are staying in Mumbai which is also admitted position, I am inclined to accept the plea raised by the applicant husband for retransfer of the proceedings filed by the applicant from Aurangabad to Mumbai.

11. Insofar as the submission of the learned counsel for the respondent that there are threats given by the applicant to the respondent and she apprehends that the applicant would give her further threats is considered, in my view there is no substance in this submission of the learned counsel for the respondent. Since both the parties are staying in Mumbai, the respondent cannot insist that the proceedings be conducted at Aurangabad. If there are any threats given by the applicant to the respondent, the respondent has remedy available in law. On that ground alone the proceedings cannot be conducted at Aurangabad when both parties are residing in Mumbai.

12. I therefore, pass the following order :-

a). Miscellaneous Civil Application No.167 of 2016 is made absolute in terms of prayer clause (b). The Family Court, Aurangabad is directed to transmit the papers and proceedings in Petition No.A410 of 2013 (A-359 of 2013) to Family Court, Bandra, Mumbai expeditiously.

b). The parties as well as two Courts described in prayer

clause (b) to act on the authenticated copy of this order.

c). Both the parties are directed to appear before the Family Court, Bandra, Mumbai on 9th January, 2017.

d). There shall be no order as to costs.

(R.D. DHANUKA, J.)