

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****MISC. CIVIL APPLICATION NO.226 OF 2014****Anagha Dhananjay Mokashi****..... Applicant****VERSUS****Dhananjay Dattatray Mokashi****..... Respondent**

Mr.Vaibhav P.Patankar for the Applicant.

Mr.Madhav J.Jamdar for the Respondent.

CORAM : R.D. DHANUKA, J.**DATE : 7th OCTOBER, 2016****P.C.**

By this application filed under section 24 of the Code of Civil Procedure, 1908, the applicant seeks transfer of the Marriage Petition PA No.926 of 2014 filed by the respondent against the applicant before the Family Court Pune to the Family Court Thane. Some of the relevant facts for the purpose of deciding this application are as under :-

2. The applicant and the respondent were married on 15th May, 2009 at Pune. Out of the said wedlock, a male child is born on 27th July, 2011 who is presently in the custody of the applicant.

3. The applicant is at present staying with her parents at Thane with her son who is 5 years old and is admitted in a school at Thane. The dispute arose between the parties.

4. The respondent issued a notice on 3rd February, 2014 through his advocate at

the Thane address of the applicant making various allegations against the applicant. The respondent thereafter filed Marriage Petition No. 926 of 2014 in the Court of Family Court at Pune inter alia praying for divorce against the applicant. The respondent also filed an application for custody of the child of the applicant and the respondent before the Family Court at Pune. The parties have filed pursis in the said proceedings by which the respondent is granted access of the child before the Children Complex at Thane.

5. Learned counsel for the applicant invited my attention to various averments made in the Miscellaneous Civil Application and the rejoinder and also to few paragraphs of the affidavit in reply filed by the respondent. He submits that the child is about five years old and is now admitted in the school in Thane. When the applicant had filed this proceeding, the applicant at that time was working as an accountant cum administrator in an office at Thane. He submits that the father of the applicant is now 69 years old and has undergone bypass surgery and is heart patient. The mother of the applicant has to take utmost care of the father of the applicant as well as the minor son of the applicant and the respondent.

6. Learned counsel for the applicant submits that though when this application was filed by the applicant inter alia praying for the transfer of the proceedings, she was working at Thane, she has now left the said job and is practicing law in the courts at Thane.

7. It is submitted by the learned counsel for the applicant that pursuant to the joint pursis filed by the parties, the respondent has been taking access of the child at Thane. She submits that the distance between the Thane and the Pune is about 135 km and with a small child and in view of the parents' being of advance age and

not keeping good health, it is not possible for the applicant to attend the proceedings at Pune filed by the respondent. He submits that the respondent on the other hand is working as a consultant with Tata Consultancy Services, Pune and is earning handsome salary. The applicant has to manage the home as well as to incur the outgoings including monthly compensation of the licence premises.

8. Mr.Jamdar, learned counsel for the respondent on the other hand submits that the applicant was working at Pune prior to her marriage and also after her marriage. He invited my attention to the summons issued by the Family Court on 19th August, 2014 showing the address of the applicant of Pune. He submits that the nature of the work assigned to the respondent by the Tata Consultancy Services is such that he is not allowed to take leave. He submits that however he is sent sometimes by the employer to France for the work allotted to him. He submits that even the applicant has accompanied the respondent to France prior to the commencement of the dispute between the parties.

9. It is submitted by the learned counsel that since the applicant is now practicing as an advocate, can visit Pune also for attending her proceedings. He submits that the applicant has been attending all the hearings of this proceedings at Mumbai and was also attending the proceedings before the learned mediator. It is submitted that the distance between Thane and Pune is not much which cannot be travelled by the applicant. He submits that if the proceedings are continued at Pune, the Family Court being close to the office of the respondent, he can conveniently attend the said proceedings.

10. Learned counsel for the applicant in rejoinder invited my attention to the notice issued by the respondent through his advocate on 3rd February, 2014 at the

alleged Pune address of the applicant. He submits that the applicant had already shifted to her parents house at Thane much prior to the issuance of the said notice dated 3rd February, 2014 and thus the applicant was issued the notice at the Thane address. He submits that though the legal notice was received at Thane address, the respondent deliberately showed the Pune address of her brother in the proceedings filed before the Family Court at Pune. He submits that the address of the brother of the applicant at Pune was deliberately given with a view to confer the jurisdiction only at Pune.

11. There is no dispute that out of the wedlock of the applicant with the respondent, a child is born who is at present 5 years old. The child is admitted in the school at Thane. When the applicant had filed these proceedings, she was working as an accountant with a firm at Thane. She is now practicing advocate at Thane.

12. The father of the applicant is now 69 years old and has undergone bypass surgery and is a heart patient. The mother of the applicant is also not keeping good health and she has to take utmost care of the father of the applicant as well as the minor child of the applicant and the respondent. There is no dispute that the respondent has been attending the Children Complex at Thane on every Saturday pursuant to the joint pursis filed by the parties for having access of the child.

13. The distance between the Thane and Pune is about 135 km. The earning of the respondent is much more than the earning of the applicant. I am not inclined to accept the submission of the learned counsel for the respondent that if the proceedings are transferred to Thane from Pune, the same would cause any inconvenience to the respondent. As and when the matter is ready for recording of

evidence of both the parties, the respondent can visit the Family Court at Thane. The respondent can always engage an advocate to represent him in the proceedings.

14. Supreme Court in case of ***Sumita Singh vs. Kumar Sanjay and another, AIR 2002 SC 396*** has held that the wife's convenience must be looked at while considering the application for transfer of the proceedings under section 24 of the Code of Civil Procedure, 1908. The Supreme Court had transferred the matrimonial proceedings filed by the husband against the wife considering the convenience of the wife. This court in case of ***Sau.Mangal Ambadas Gaikwad vs. Ambadas Kachru Gaikwad & Anr., 2012(7) ALL MR 440*** after adverting to the judgment of Supreme Court in case of ***Sumita Singh*** (supra) has held that the convenience of the wife has to be considered by the court while considering an application under section 24 of the Code of Civil Procedure, 1908. This court considered the distance of 120 km in the said matter and allowed the transfer petition filed by the wife. The principles of law led down by the Supreme Court in case of ***Sumita Singh*** (supra) and this court in case of ***Sau.Mangal Ambadas Gaikwad*** (supra) squarely apply to the facts of this case. This court in catena of decisions has taken the same view after applying the principles led down by the Supreme Court in case of ***Sumita Singh*** (supra) and by this court in case of ***Sau.Mangal Ambadas Gaikwad*** (supra).

15. In my view the convenience of the wife has to be considered while considering the application under section 24 of the Code of Civil Procedure, 1908.

16. Learned counsel appearing for the applicant submits that the respondent in any case has to travel some distance between his office to the Family Court which

also takes lot of time considering the traffic at Pune. Learned counsel for the respondent on the other hand submits that the distance between the office of the respondent and the Family Court is not much and can be traveled within 15 minutes on two wheeler. In my view the applicant has made a case for the transfer of the proceedings as prayed.

17. I, therefore, pass the following order :-

- (a) Miscellaneous Civil Application No.226 of 2014 is made absolute in terms of prayer clause (a).
- (b) The learned Family Court, Pune is directed to transmit the proceedings Marriage Petition PA No.926 of 2014 filed by the respondent to the Family Court, Thane expeditiously.
- (c) The parties are directed to remain present before the Family Court, Thane on 19th November, 2016.
- (d) The parties as well as the learned Family Court Pune to act on the authenticated copy of this order.

(R.D.DHANUKA, J)