

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

MISC. CIVIL APPLICATION NO. 239 OF 2014

Mrs.Kanchan Prashant Sadarangani
@ Ms.Kanchan Rameshlal Bhojwani,
R/at Flat No.4, Plot No.294,
Ashoka Apartment, Opp. MUCC,
Pimpri, Pune – 411 017.

... Applicant

v/s

Mr.Prashant Prakash Sadarangani,
R/at 24, Everest Building, 3rd floor,
Pedder Road, Mumbai – 400 026.

... Respondent

Mr.Sandesh Patil along with Chintan Shah and Lalit Jhunjhunwala
i/by Pavan Patil for the applicant.

Mr.Deepak Trashalawala along with V.S.Hadade for the respondent.

Coram: N.M. Jamdar, J.

Dated: 4 August 2016

ORAL ORDER:

By an order dated 2 December 2014, notice was issued to the Respondent directing that the application will be decided finally at the stage of admission itself.

2 By this application filed under Section 24 of the Code of Civil

Procedure, the Applicant wife is seeking transfer of M.J. Petition No.A-2627 of 2014 pending in the Family Court, Bandra, Mumbai, to the Family Court, at Pune. M.J. Petition No.2627 of 2014 is filed by the Respondent in the Family Court, at Mumbai, wherein the Respondent has prayed that the decree of divorce be passed dissolving the marriage solemnized between the Applicant and the Respondent on 21 November 2011, on the ground of cruelty under the provisions of Section 13(1)(ia) of Hindu Marriage Act. The petition is filed on 10 October 2014. It is for transfer of this petition to Pune that the present application is filed.

3 I have heard Mr.Patil, learned counsel for the Applicant and Mr.Trashalawala, learned counsel for the Respondent.

4 In the application the Applicant has submitted that the Applicant is 33 years old and is presently residing at Pune and the distance between two cities is about 125 kms. The Applicant is residing with her aged parents. The Applicant has no brothers and three sisters. The Applicant's father is 60 years and mother is 59 years old. It is stated that only the Applicant has to bear the cost and expenses. It is stated that the Respondent is earning a substantial income and it will be in the interest of justice to transfer the proceedings. A reply has been filed by the Respondent. The assertion that the Applicant is not having source of income is denied. The Applicant is earning substantial amount from beauty parlour business

which is carried on by her. It is stated in the reply that the parents of the Applicant are not that aged. It is also stated that parties last residing in Mumbai and, therefore, the proceedings have been rightly instituted in Mumbai. In the reply, it is also asserted that the Respondent is taking tuitions and does not earn substantial income as asserted by the Applicant and students will suffer if Respondent has to attend the proceedings at Pune. It is also asserted that, if the Applicant attends the proceedings in Mumbai, the Respondent is willing to pay the stipulated amount. To the reply, rejoinder has been filed by the Applicant wherein the Applicant has placed on record material to show that the Respondent has purchased flat in Pune. It is also stated that taking tuitions is not the only business carried on by the Respondent. During the oral argument, learned counsel for the parties have put-forth the averments made in their pleadings. In addition, the learned counsel for the Applicant has submitted that the Respondent himself had made a reference to various instances which will demonstrate that the parties have last reside in Pune. Learned counsel for the Respondent, on the other hand, submitted that the application filed by the Applicant does not put-forth any meritorious ground for transfer of the application and the grounds made out are incorrect.

5 Firstly, the position of law as regards the transfer of matrimonial proceedings, as it emerges from various decisions, will have to be kept in mind. In series of decisions the Apex Court as well this Court,

which have indicated that the Courts in such matter generally lean in favour of convenience of the wife, when wife seeks transfer of the proceedings unless the substantial difficulty is shown by the husband and that he will be worse off. In the present case, even assuming that both the parties are financially well placed, still the question would arise as to which city proceedings should go on. At present, the Applicant is staying in Pune when her parents and the Respondent is staying in Mumbai. After the rejoinder is filed placing on record the Index II of various flats, there is no further affidavit filed by the Respondent. The Index-II which is annexed to the rejoinder shows a flat in the name of the Respondent admeasuring 418 sq.ft. carpet area at Pune. There is one more flat admeasuring 674.76 sq.ft. which is in the name of M/s.Adhita Trading Co. Pvt. Ltd. through authorized representative in the name of the Respondent, at Pune. There is also a flat admeasuring 863.38 sq.ft. carpet area along with terrace and covered car parking in the name of M/s.Adhita Trading Co. Pvt. Ltd. through authorized representative in the name of the Respondent. These documents, which have gone un-controverted, *prima facie*, indicate that it cannot be said that Respondent has no connection with Pune and will not have any place to stay in Pune if the proceedings are transferred to Pune. It also shows financial capacity of the Respondent, which is contrary to his assertion that he has no source of income except taking tuitions.

6 If the marriage petition is seen, the Respondent has stated that

the parents were living in Pune at the relevant time. It is also asserted that the Respondent took the Applicant to Ruby Hospital at Pune to undergo examination counseling and the doctor attached to the Ruby Hospital advised that the Applicant be sent to the Counselor for treatment. It is then asserted that, when the Applicant visited Pune again, it was decided that the Applicant and the Respondent will live separately, accordingly the Applicant collected her belongings from his parents who reside in Pune. It is therefore argued by the Applicant that, in fact the cause of action arose in Pune. Further, it cannot be said that the Respondent has no connection with Pune at all or that the Respondent will have no place to stay if the matter is transferred to Pune.

7 As regard the case of the Respondent that he is only taking tuitions, there are entries in the income tax returns of the Respondent in which the Respondent has given Rs.11,25,252/- as loss on Speculation Trading. Therefore, it *prima facie* indicates that taking tuitions is not the only activity that the Respondent is carrying on.

8 Further, the question is of the Applicant traveling to Mumbai, alone. It is the case of the Respondent himself that the Applicant is mentally imbalanced and he has relied upon the Counselor's report which is annexed to the affidavit in reply filed in this application. According to the Respondent, the Counselor has opined that the Applicant is suffering from Paranoia, a disturbed state of mind. This is also one of the ground on which divorce is sought. Therefore, it is

rightly contended by Mr.Patil, if this is the assertion put-forth by the Respondent to seek divorce, it cannot be asserted by the Respondent that the Applicant will have no difficulty in travelling to Mumbai alone.

9 Considering the equities of the matter and the facts, the averments made in the petition which indicate that the parties residing in Pune last, case is made out for transfer of proceedings to Pune.

10 It is informed that the Applicant also filed proceedings under the Domestic Violence Act, bearing No.2101136 of 2014. To balance the equities, a query was put to the learned counsel for the Applicant, if these proceedings be transferred from the Court of Judicial Magistrate, Pimpri, to the Family Court at Pune, so that both the matrimonial proceedings as well as the proceedings under the Domestic Violence Act can be heard together and the Respondent does not have to attend two different Courts on two different dates. Learned counsel for the Applicant, on instructions, submitted that the Applicant has no objection and will make request to the concerned Family Court Judge to keep both these proceedings on the same date. He has also made a statement that though the Applicant has joined other relatives of the Respondent as parties in the domestic violence case, has not sought their presence and will not do so unless specifically required by the Court. These two statements, which are accepted, to my mind, will adequately safeguard the interest of the

Respondent as well. The learned counsel for the Respondent has no objection for transfer of the case instituted in the Court at Pimpri, to the Family Court, Pune.

11 Accordingly, the miscellaneous civil application is allowed as under :

(a) The proceedings of M.J. Petition No.A-2627 of 2014 pending before the Family Court, Bandra, at Mumbai, shall stand transferred to the Family Court at Pune.

(b) The proceedings bearing Criminal Misc. Application No.1136 of 2014 pending in the Court of Judicial Magistrate, First Class, Pune, by consent, stand transferred to the Family Court at Pune.

12 The learned Family Court Judge will accordingly give same date in both the proceedings.

13 No costs.

(N. M. Jamdar, J.)