

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

MISC. CIVIL APPLICATION NO.59 OF 2015

Krutika Ritesh Arya .. Applicant
Vs.
Ritesh Laxman Arya .. Respondent

Mr.Viral Rathod i/by Mr.Harshad Palwe for the applicant.
Mr.Devendra Joshi for the respondent.

CORAM : R.D. DHANUKA, J.
DATE : 2nd February 2016

Oral Judgment :-

1. By this miscellaneous civil application filed under Section 24 of the Code of Civil Procedure, 1908, the applicant seeks transfer of the Petition bearing No.HMP 777/2014 filed by the respondent husband against the applicant before the Court of Civil Judge, Senior Division, Kalyan to the Family Court at Nashik for hearing and final disposal on merits. Some of the relevant facts for the purpose of deciding this application are as under :-

2. The applicant and the respondent were married on 17th January 2012 at Nashik as per Hindu rites and customs. It is the case of the applicant that the respondent works at TCS at Mumbai and resides at Badlapur. It is the case of the applicant that in view of the harassment by the respondent and his family members and due to various reasons recorded in the miscellaneous civil application, the applicant was compelled to leave her matrimonial home and shift to her parents house situated at Nashik. On 8th February 2013, the applicant delivered a baby

boy out of the wedlock of the applicant and the respondent. The applicant was served summons from the Kalyan District Court in HMP Case No.777/2014 filed by the respondent under Section 13(1)(i-a) of the Hindu Marriage Act, 1955 inter alia praying for divorce. The applicant has not filed any proceedings against the respondent.

3. Learned counsel appearing for the applicant submits that the distance between Nashik and Kalyan is about 120 kms and if the applicant is asked to attend the proceedings at Kalyan, the applicant will face innumerable contingencies and hardship. He submits that the applicant has to look after the baby who is 2 years and 11 months old now. He submits that if the applicant takes a child along with her who is very delicate to travel with the child, the child will be infected with various diseases.

4. Learned counsel appearing for the applicant also invited my attention to various medical documents annexed at Exhibit-E to the application and would submit that in view of the Post Pregnancy complications and in view of the applicant suffering from various ailments as demonstrated in the medical reports, it would not be possible for her to travel to the Court at Kalyan. The applicant is also suffering from malnutrition and is very weak. He submits that the applicant will have to travel by public transport and will have to commence her journey at 6.00 a.m. to reach the Court at 11.00 a.m. It is submitted by the learned counsel for the applicant that the applicant is not working and is totally unemployed and depends upon her parents.

5. Learned counsel for applicant invited my attention to two judgments of this Court in the cases of ***Chaya w/o Balaji Birajdar Vs. Balaji s/o Ishwarrao Birajdar***, reported in ***2011 (2) Mh.L.J. 44*** and ***Aruna Gorakhnath Korde Vs. Gorakhnath Devidas Korde***, reported in ***2014 (3) Mh.L.J. 23*** and would submit that since the applicant is unemployed and is not keeping good health and has a child who is 2 years and 11 months old, convenience of the applicant will have to be considered by this Court while considering the application under Section 24 of the Code of Civil Procedure, 1908.

6. Learned counsel appearing for the respondent, on the other hand, submits that due to the conduct of the applicant, the respondent was required to file a police complaint against the applicant. He submits that the mother of the respondent is suffering from Cancer and it is not possible for the respondent to leave his mother unattended for attending the proceedings at Nashik. He submits that the respondent is ready and willing to pay reasonable normal expenses of the applicant on the day of her attending the Kalyan Court. He submits that the distance between Nashik and Kalyan is hardly about 120 kms. and there are regular trains as well as bus services available between two junctions. He submits that the applicant is not required to attend the Court proceedings everyday and as and when the evidence begins, the applicant can attend the proceedings.

7. Learned counsel for the respondent placed reliance on the unreported orders of this Court delivered on 28th June 2012 in the case of ***Madhavi Rajendra Torne Vs. Rajendra Devidas Torne*** in Misc.

Civil Application No.151 of 2011 and on 8th February 2012 in the case of ***Kavita Nitin Dhamke Vs.Nitin Kashinath Dhamke*** in Misc. Civil Application No.164 of 2011, the judgments of the Supreme Court in the cases of ***Anindita Das Vs.Srijit Das***, reported in ***(2006) 9 SCC 197*** and ***Kalpna Deviprakash Thakar Vs.Dr.Deviprakash Thakar***, reported in ***(1996) 11 SCC 96***. It is submitted that the Supreme Court has held that because of the indulgence granted by the Supreme Court in case of transfer of the application in favour of the wife, there will be a misuse of the order passed by the Supreme Court by the women to whom the indulgence is shown by the Supreme Court. He submits that as the respondent is ready and willing to pay reasonable expenses on transportation of the applicant, no prejudice would be caused to the applicant if the matter is continued at Kalyan only.

8. Learned counsel for the applicant in rejoinder distinguishes the judgments relied upon by the learned counsel for the respondent and submits that the facts before this Court and before the Supreme Court in those judgments relied upon by the learned counsel for the respondent are totally different. In none of the judgments relied upon by the learned counsel for the respondent, the Courts have considered the issue that the parties had 2 years and 11 months old child and the wife was suffering from various ailments.

9. It is not in dispute that the child of the applicant and the respondent is hardly 2 years and 11 months old who is staying with the applicant. Medical reports annexed to the application by the applicant clearly indicate that the applicant has been suffering from various

ailments and Post Pregnancy complications. The applicant has been staying with her parents at Nashik. The respondent admittedly is working, though in his affidavit he has alleged that he is working temporary. It is stated by the learned counsel for the applicant that the applicant is not working. Learned counsel for the respondent submits that he is not aware of the present position of the applicant whether she is working or not.

10. In so far as the submission of the learned counsel for the respondent that the applicant can be paid reasonable amount on transportation of the applicant from Nashik to Kalyan and no prejudice would be caused to the applicant is concerned, in my view, merely because the respondent has offered to pay reasonable expenses on transportation will not be sufficient for the applicant to leave her 2 years and 11 months old child with her old parents for attending the Court proceedings at Kalyan. The Court has to take into consideration the relevant facts which would affect the wife if she is directed to attend the proceedings from the place where she is residing to another place.

11. The respondent is not in a position to dispute the medical reports submitted by the applicant which are annexed to the miscellaneous civil application. There is no such ailment being suffered by the respondent himself. The only reason given for opposing this application is that his mother is suffering from Cancer. There are other family members of the respondent staying with the respondent to take care of his mother. In my view, since the respondent has himself agreed to offer reasonable expenditure to the applicant to attend the proceedings, the respondent can himself travel to Nashik.

12. In so far as the order passed by this Court on 28th June 2012 in the case of *Madhavi Rajendra Torne (supra)* relied upon by the learned counsel for the respondent is concerned, in that matter, wife had filed a complaint with the Police against the husband when she was not accompanied by anybody. The mother of the respondent was bed-ridden. There was nobody at the residence of the respondent to look after his mother. It was held that if the proceedings were transferred, the respondent will have to take leave from service. In these circumstances, this Court held that there cannot be any fixed formula in deciding the applications for transfer of the proceedings under Section 24 of the Code of Civil Procedure, 1908. In my view, the facts of the case before this Court in the case of *Madhavi Rajendra Torne (supra)* are totally different and are distinguishable in the facts of this case. The said judgment would not assist the case of the respondent.

13. In so far as the order passed by this Court in the case of *Kavita Nitin Dhamke (supra)* relied upon by the learned counsel for the respondent is concerned, this Court has considered the situation where the wife was aged 42 years and a matured lady. In that case, it was not the case of the petitioner-wife that she was suffering from various ailments and has 2 years and 11 months old child. The facts of the case before this Court in the case of *Kavita Nitin Dhamke (supra)* are totally different and are distinguishable in the facts of this case. The said judgment would not assist the case of the respondent.

14. In so far as the judgment of the Supreme Court in the case of *Anindita Das (supra)* relied upon by the learned counsel for the

respondent is concerned, Supreme Court has made an observation while considering the application for transfer of the proceedings under Section 25 of the Code of Civil Procedure, 1908 from one State to another State that in view of the leniency shown by the Supreme Court, a large number of transfer petitions were filed by women taking advantage of the leniency shown by the Supreme Court. It is held that the Supreme Court is required to consider each petition on its merits. Supreme Court distinguished the earlier judgment relied upon by the petitioner-wife on the ground that in that case, the child is six years old and there were grandparents available to look after the child. In my view, the judgment of the Supreme Court in the case of *Anindita Das (supra)* would not apply to the facts of this case and would not assist the case of the respondent.

15. In so far as the judgment of the Supreme Court in the case of *Kalpna Deviprakash Thakar (supra)* relied upon by the learned counsel for the respondent is concerned, Supreme Court has considered the situation where the husband was a medical practitioner and so his absence from Bombay would cause difficulty to his patients. The petitioner-wife made an application for transfer of divorce proceedings from Palanpur, Gujarat. Supreme Court has also considered the fact that the petitioner-wife had some near relations in Bombay and during her visit, she could stay with her close relatives and had accommodation with them. In this case, it is not the case of the applicant that the applicant is not having any relatives at Kalyan and has place of accommodation available at Kalyan. The facts before the Supreme Court in the case of *Kalpna Deviprakash Thakar (supra)*, in my view, are totally different

and are clearly distinguishable in the facts of this case and would not assist the case of the respondent.

16. This Court in the cases of *Chaya Balaji Birajdar (supra)* and *Aruna Gorakhnath Korde (supra)* after considering the judgment of the Supreme Court in the case of ***Sumita Singh Vs. Kumar Sanjay***, reported in **2001 (10) SCC 41** has held that in the proceedings filed by the husband, it is the convenience of the wife that should be looked into. The said judgment of the Supreme Court has been followed by this Court and also by the Supreme Court in the catena of decisions. In my view, the judgment of the Supreme Court in the case of *Sumita Singh (supra)* and the judgments of this Court in the cases of *Aruna Gorakhnath Korde* and *Chaya Balaji Birajdar (supra)* squarely apply to the facts of this case. I am respectfully bound by these judgments. In my view, the applicant has made out a case for transfer of the Petition bearing No.HMP 777/2014 filed by the respondent husband pending in the Court of Civil Judge, Senior Division at Kalyan to the Family Court, Nashik for hearing and final disposal. I am of the view that while considering the application under Section 24 of the Code of Civil Procedure, 1908, the Court has to see the convenience of the wife more than the convenience of the husband.

17. I therefore pass the following order :-

- (a) Miscellaneous civil application is made absolute in terms of prayer clause (a);
- (b) Learned Civil Judge, Senior Division, Kalyan is directed to transmit the paper and proceedings of the Petition bearing No.HMP 777/2014

pending in the Court of Civil Judge, Senior Division at Kalyan to the Family Court, Nashik expeditiously;

- (c) Both the parties are directed to proceed with the proceedings at Nashik expeditiously;
- (d) The Family Court, Nashik shall make an endeavour to dispose of the proceedings expeditiously in co-operation with both the parties;
- (e) There shall be no order as to costs.

18. At this stage, learned counsel for the respondent states that since the applicant has now admittedly received the summons, an appropriate direction be issued to the Family Court, Nashik to fix an early date for issuing appropriate directions. Learned counsel for the applicant submits that he has no objection if such direction is issued and submits that his client will appear before the Family Court, Nashik whenever her presence is required without fail. Statement is accepted.

19. Family Court, Nashik is, accordingly, directed to fix the matter for appropriate direction on 14th March 2016.

20. Parties as well as the learned Civil Judge, Senior Division, Kalyan shall act on the authenticated copy of this order.

R.D. DHANUKA, J.