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**BEFORE THE PARSI CHIEF MATRIMONIAL SESSION AT
BOMBAY**

NOTICE OF MOTION NO. 12 OF 2015

IN

PARSI SUIT NO. 5 OF 2015

Kamalrukh Tehmul Sethna ...Plaintiff

Versus

Tehmul Burjor Sethna ...Defendant/
Applicant

And

Ms. Devina Panchal ...Co-Defendant
No. 1

Ms. Rohini S. Pandit, *for the Plaintiff.*

Ms. Sanobar Nanavati, *for Defendant No. 1/Applicant.*

CORAM: G.S. PATEL, J

DATED: 25th August 2016

PC:-

1. I am concerned here with the 1st Defendant's Notice of Motion No. 12 of 2015. This Notice of Motion seeks that the Suit be dismissed for want of jurisdiction or alternatively that the plaint be returned to the Plaintiff for presentation to the proper Court.

2. It is not in dispute that the Plaintiff and the 1st Defendant were married in Ahmedabad on 8th November 1987 or that they last

resided and cohabited as man and wife in Ahmedabad till November 2014, when the Plaintiff-wife left Ahmedabad. This Suit was filed on 15th April 2015 in the Bombay High Court as a matrimonial Suit under the Parsi Marriage & Divorce Act, 1936 (“**PMDA**”). It came to be numbered as Parsi Suit No. 5 of 2015.

3. The PMDA is a special statute.¹ It governs marriage law between Parsi Zoroastrians. Members of this community are governed by this Act if both are within the community and their marriage is performed according to Parsi Zoroastrians rites and customs. The PMDA also has a special provision regarding jurisdiction and this is set out in Section 29:

“29. **Court in which suit to be brought.**—(1) All suits instituted under this Act shall be brought in the Court within the limits of whose jurisdiction the Defendant resides at the time of the institution of the suit or where the marriage under this Act was solemnized.

(2) When the Defendant shall at such time have left the territories to which this Act extends, such suit shall be brought in the Court at the place where the Plaintiff and Defendant last resided together.

(3) In any case, whether the Defendant resides in the territories to which this Act extends or not, such suit may be brought in the Court at the place where the Plaintiff resides or at the place where the Plaintiff and the Defendant last resided together, if such Court, after recording its reasons in writing, grants leave so to do.”

1. It is a special statute in more ways than one. Apart from anything else, it is conceivably the only statute surviving today that contemplates a trial by jury and has a statutory bar of an appeal on facts against the jury’s verdict.

4. On a plain reading, this Section gives that Court jurisdiction where (1) the marriage was performed; (2) where the parties resided; or (3) with previous leave of the Court obtained for reasons to be recorded, in the Court where the Plaintiff resides or where the parties last resided even if the Defendant stays elsewhere.

5. The 1st Defendant does not reside in Mumbai. The marriage was not solemnized in Mumbai. The parties did not last reside together in Mumbai. It is admitted that no such leave was ever obtained. This Court clearly does not have jurisdiction to entertain this Suit at all.

6. A suggestion is made by Ms. Pandit for the Plaintiff, though in fairness she does not press it beyond the point, to the effect that since the Plaintiff has succeeded in obtaining a Supreme Court order transferring to this Court the 1st Defendant's Petition for restitution of conjugal rights filed in Ahmedabad, this Court would acquire jurisdiction. I think this submission is misconceived. The 1st Defendant filed his Petition for restitution of conjugal rights (Family Suit No. 192 of 2015) in a Court of competent jurisdiction in Ahmedabad. Shortly thereafter, this Suit was filed in this Court but without obtaining leave. The Plaintiff then moved the Supreme Court in Transfer Petition (Civil) No. 612 of 2015. The 1st Defendant filed the present Notice of Motion challenging this Court's jurisdiction on 21st July 2015. It was served on the Plaintiff on 30th July 2015. However, without referencing that challenge or this Notice of Motion, and without in any manner referencing the special provisions of the Parsi Marriage & Divorce Act, 1936, the

Plaintiff sought a transfer order from the Supreme Court the very next day, i.e., 31st July 2015.

7. The order of the Supreme Court of 31st July 2015 does not support Ms. Pandit's submission at all. It reads as follows:

"Order dated 31st July 2015 is modified. The proceedings of Family Suit No. 192 of 2015, titled as "Tehmul Burjor Sethna vs. Dr. Kamalrukh Tehmul Sethna", pending before the Family Court Judge at Ahmedabad will now stand transferred to the Family Court at Mumbai. **In case the Family Court at Mumbai finds that it has no jurisdiction in the matter it shall transfer the case to such Court as may be competent.**

Office report is directed accordingly."

(Emphasis added)

8. The last four lines of this order make it clear that the Supreme Court specifically kept open the issue of jurisdiction. The Supreme Court order speaks of the 'Family Court'; in the context of the PMDA, that can only mean this Court (the Parsi Chief Matrimonial Court), because the Plaintiff's suit could not have been filed anywhere else. The Supreme Court directed that should I, therefore, find that this Court has no jurisdiction, then I must transfer the case to a competent Court. Thus, under the very order that has been obtained by Ms. Pandit, it is within my remit to transfer these proceedings to a Court of competent jurisdiction.

9. In fairness, Ms. Pandit agrees that leave ought to have been sought and obtained. Ms. Nanavati points out that not only should leave have been obtained but a copy of that should have accompanied the Writ of Summons. Without this, the Court cannot assume a jurisdiction that it inherently lacks.

10. There is considerable substance to Ms. Nanavati's submission. Ms. Pandit is unable to explain how this Court can be said to have jurisdiction.

11. In view of this, these proceedings will stand transferred to the District Court in Surat, that being the Court in Gujarat that, I am told, hears Parsi Matrimonial Case, there being an empanelled jury of delegates in Surat. The Ahmedabad Family Court, it is agreed, does not have jurisdiction. Parties before me agree that it is the District Court in Surat that will have jurisdiction

12. It is clarified that the transfer will be of the present matrimonial Parsi Suit No. 5 of 2015 as also the 1st Defendant's Petition for restitution of conjugal rights, viz., Family Suit No. 192 of 2015.

13. Lastly, it is clarified that the Plaintiff in the present divorce proceedings will have to take appropriate directions from the District Court in Surat Ahmedabad for effecting service in accordance with the Rules and procedures of that Court.

14. Ms. Pandit now points that there is also a pending proceeding under the Domestic Violence Act filed before the 12th Magistrate. Ms. Pandit has sought a transfer of that Domestic Violence proceedings to this Court. That transfer application is pending before another Bench on the appellate side of this Court. Liberty to the parties to move that Bench for a transfer of those DV proceedings to the Surat Court as well. Ms. Pandit is also at liberty to withdraw her transfer application of DV proceedings, if she is so instructed.

15. The Suit is disposed in these terms.

(G. S. PATEL, J.)