

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

Misc. Civil Application No. 1241 of 2014

(Sau. Sangita Anil Kamble Vs. Anil S/o Sudam Kamble)

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
of directions and Registrar's orders

Court's or Judge's order

Shri S. D. Chande, Advocate for the applicant

Shri P. S. Wathore, Advocate for the non-applicant

CORAM : Prasanna B. Varale, J.

DATE : 1-2-2016.

Heard learned counsel appearing for the parties.

By the present application, the applicant-wife is seeking transfer of matrimonial proceedings namely, M.P. 541/2013 and H.M.P. No. 404/2013 pending before the learned Civil Judge Senior Division at Kalyan, District Thane to the file of learned Civil Judge Senior Division at Washim. The marriage between the couple was solemnized on 11-4-2011 at Shelgaon, Taluka Mangrulpir, District Washim. The applicant and non-applicant, both are legal professionals. It is submitted that within short span of matrimonial life, the applicant was subjected to ill-treatment. The applicant was unable to bear the ill-treatment and left with no choice but to live with her parents at Washim and also started her practice with a senior lawyer at Washim. It is submitted that the applicant filed certain proceedings in the Court of Judicial Magistrate First Class, Mangrulpir, District Washim and as a counter blast,

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the non-applicant also initiated certain proceedings against the applicant at Kalyan. It is submitted that the distance from Washim to Kalyan is more than 700 Kms. It is further submitted that the applicant who is residing at her parental home and is a junior lawyer having started her practice recently at Washim, it causes hardship and inconvenience to the applicant to travel for a distance of more than 700 Kms to attend the proceedings at Kalyan. It is submitted that as there is no other male member in the family except her father, it also causes inconvenience to the applicant to attend the proceedings on her own at a place far away from Washim. On these grounds, the applicant is before this Court seeking transfer of the matrimonial proceedings.

Learned counsel for the non-applicant vehemently opposed the application. The learned counsel submitted that the applicant is an independent professional and she cannot take shelter of inconvenience only on the ground that she is a lady. The learned counsel for the non-applicant further submitted that the non-applicant is ready to bear the burden of fare of the applicant for attending the proceedings. Learned counsel for the non-applicant relied on the judgment of the Apex Court reported in *(2006) 9 SCC 197* in the case of *Anindita Das Vs. Srijit Das*. He submitted that the Apex court observed that the transfer application

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cannot be allowed only on the ground that the applicant is a lady and inconvenience is caused to the lady. He submitted that in the case of **Anindita Das** (*cited supra*), the Apex Court directed the respondent – husband to pay the travel and stay expenses whenever the wife is required to attend the Court case. Counsel for the non-applicant submitted that the non-applicant is ready to bear the burden of travel and stay.

On hearing the rival contentions and though at first blush, the submissions of learned counsel for the non-applicant looks attractive, I am unable to accept the submissions for the reason that in the present case, the applicant is seeking transfer on account of inconvenience as the distance between these two places, namely, Washim and Kalyan is nearly 700 Kms. The applicant is having no other male member in the family who can attend the proceedings along with her as an escort to her. On the other ground, this Court is not convinced with the submissions of learned counsel for the non-applicant for the reason that the non-applicant had first initiated the proceedings i.e. Hindu Marriage Petition for decree of divorce under Section 13(1)(i-a) of the Hindu Marriage Act, 1955 in the Court of Civil Judge Senior Division, Washim but immediately sought withdrawal of the said proceeding by way of pursis stating reason that he is not interested in prosecuting the proceedings and subsequently soon after the

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withdrawal, immediately, filed the petition for the same prayer in the Court of Civil Judge Senior Division, Kalyan, District Thane. Thus, there is some substance in the submissions of learned counsel for the applicant that the non-applicant is filing the proceedings at a far distance only to harass the applicant.

The learned counsel for the non-applicant placed reliance on the judgment of the Apex Court in the case of *Kalpana Deviprakash Thakar Vs. Dr. Deviprakash Thakar* delivered on 4-11-1996. I am unable to accept the submissions of learned counsel for the non-applicant for the reason that the non-applicant, being a legal professional, is expected to attend the case at any place if he is to prosecute that case on behalf of his clients and thus, the non-applicant cannot take ground that it will cause inconvenience to him to travel from Kalyan to Washim.

Considering all these above referred facts, in my opinion, learned counsel for the applicant has made out the case. The application is allowed.

Proceedings, namely, M.P. 541/2013 and H.M.P. No. 404/2013 pending on the file of Civil Judge Senior Division at Kalyan, District Thane be transferred to Civil Judge Senior Division at Washim.

The application is disposed of in above terms.

JUDGE

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