

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

MISCELLANEOUS CIVIL APPLICATION NO. 69 OF 2016

Mrs. Shubhangi w/o Dnyaneshwar Sagar
Age-25 years, Occ: Household,
R/o. Madaz Tq. Omarga, Dist. Osmanabad ...Applicant

Versus

Dnyaneshwar Namdev Sagar
Age-30 years, Occ: Business,
R/o. Room No. 165/2/4, Mahatmaphule Chawl,
Sagbag, Marole, Andhri East,
Mumbai-400059. ...Respondent

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Mr. B. R. Kedar, Advocate for applicant
Mrs. Sukhsagar Singh, Advocate for respondent

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[CORAM: SUNIL P. DESHMUKH, J.]
Date: 30th March, 2017

ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith. Heard finally by consent of parties.

2. Applicant is wife of respondent and is before this court seeking transfer of proceedings bearing Marriage Petition No. A-2197/2015, initiated by respondent for divorce in family court at Bandra, Mumbai to a competent

court at Omerga, District Osmanabad.

3. Learned counsel for the applicant submits that applicant and respondent married in May, 2014 and after marriage she had been staying with respondent in Mumbai. Respondent for quite a few days treated her well. After lapse of sometime, respondent and her in-laws changed their attitude and started harassing and ill treating her. Around May, 2015, she had been driven out of matrimonial house from Mumbai. She, as such, was required to return to her parents in rural place at Madaz, Taluka Omerga, District Osmanabad which is about 12 kilometer away from Omerga.

4. Learned counsel further submits that subsequently, around July, 2015, respondent had initiated proceedings for divorce. Learned counsel for the applicant submits that it is difficult for the applicant to travel to attend to the proceedings at Bandra, Mumbai from Madaz, Omerga. Learned counsel further refers to distance from Madaz, Omerga to Bandra, Mumbai to be about 500 kilometer. Applicant has no source of income, she is dependent on her parents for her livelihood. Their economic condition is not well. No maintenance is paid to her by respondent. He

further submits that though the respondent resides at Mumbai, yet, him and other members of their family hail from Osmanabad district. He further purports in order to cover otherside arguments over the health issues being raised in affidavit-in-reply of respondent, documents annexed to the reply depict that it is not such a case wherein respondent would not be able to travel from Mumbai to Omerga. He further points out and submits that, in any case, it is the case of the respondent that respondent is a driver by occupation and works seasonally in industry, constructions etc.

5. Learned counsel for applicant submits, although it is being contended on behalf of the respondent that it would be convenient for applicant in Greater Bombay, yet, it is difficult to have arrangements for applicant, as the economic condition of her parents is very weak and they are not able to bear expenses of traveling. Learned counsel further submits that, in any case, to and fro traveling expenses i.e. from Omerga-Bandra, Mumbai would not be less than Rs.3000/- on each trip.

6. He submits that overall legal position is that it is convenience of wife which should be given regard to. He

refers to a decision in support of his submission in the case of **Sau. Snehal Omprakash Kothekar vs. Shri Omprakash Domaji Kothekar** reported in **2014(1) All MR 297**. He further points out the distance between the two places is 500 kilometer and urges this court to grant application for transfer.

7. Learned counsel further submits that the respondent is able bodied person and would be able to travel to Omerga comfortably and difficulties expressed on his behalf are not such, as would prevent him from undertaking journey.

8. Learned counsel for respondent, Mrs. Sukhsagar Singh resists the request of the applicant and submits that the applicant had been after him to yield to her desire to get separated from his parents and other members of family. Respondent stays in Mumbai along with his brothers and parents and there has been mishap due to strain in marital relationship. She further submits that affidavit-in-reply and the annexures thereto would show that respondent is suffering ailment and documents are indicative of suffering by respondent i.e chest pain and contends it would not be desirable to travel long distances.

She further submits that reasonable expenses of traveling to Mumbai may be borne by the respondent, however, magnitude of expenses suggested on behalf of applicant would be difficult to be provided by him.

9. Looking at aforesaid, parties do not appear to be in dispute on that there is distance of 500 kilometer between Bandra, Mumbai and Omerga and so also about economic status of the applicant and her parents and further that the respondent is getting seasonally employed as driver.

10. In the circumstances, looking at that, respondent is able bodied and working person and though is contended to be suffering ailment, it is not a case, the ailment would not allow him to travel. In such a case, dates matter can be so arranged as would be convenient to the respondent to attend the court proceedings at Omerga, District Osmanabad. It would thus be conducive to the interest of the parties to go ahead with the proceedings as expeditiously as possible, from the stage at which the proceedings are standing at Bandra, Mumbai.

11. In view of aforesaid, miscellaneous civil application stands allowed.

12. Proceedings i.e. Marriage Petition no. A-2197/2015, pending before family court at Bandra, Mumbai are transferred to a competent court at Omerga in Osmanabad district.

13. Dates in proceedings after transfer at Omarga be so arranged, as would be convenient to the respondent.

14. It is expected that parties would cause their appearance on 2nd May, 2017, before the competent court at Omerga, District Osmanabad. The proceedings be disposed of as expeditiously as possible, preferably within a period of six months from 2nd May, 2017.

15. Rule made absolute accordingly.

[SUNIL P. DESHMUKH, J.]

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