

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

MISCELLANEOUS CIVIL APPLICATION NO. 199 OF 2016

Darshana w/o Prashant Khairnar
Age: 30 years, Occu: Household.
R/o c/o Sudhir Pundlik Chavan,
Plot no. 46, Old Bhagwn Nagar,
Behind Girna Water Tank,
Jalgaon District: Jalgaon

...Applicant
(Ori. respondent)

Versus

Prashant Subhash Khairnar
Age: 36 years, Occu: Service
R/o Flat no. 13, 2nd Floor,
Sai Park, Vadgaon Alandi Road,
Alandi, Pune, Dist. Pune

...Respondent
(Ori. Petitioner)

...

Mr. Azizoddin R. Syed, Advocate for applicant
Mr. Hemant Surve, Advocate for respondent

...

[CORAM: SUNIL P. DESHMUKH, J.]
Date: 19th April, 2017

ORAL JUDGMENT:

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

2. Applicant-wife is before this court seeking transfer of proceedings bearing Miscellaneous Application no. 676 of 2016, lodged by respondent-husband before the District Judge, Pune, seeking custody of child viz; Master Chinmay, to District Judge at Jalgaon.

3. Learned counsel on behalf of applicant contends that there are quite a few proceedings pending at Jalgaon filed by the applicant and a few proceedings have also been initiated at the behest of respondent at Jalgaon. Learned counsel for the applicant purports to refer to list of matters at Jalgaon.

4. Learned counsel goes on to contend that father of the applicant is an old person and is in service and the applicant is residing with her father. Applicant and member of her paternal family are arraigned in proceedings at Pune. The distance between the two places is quite long and which is about 380 kilometer and it is difficult for them to attend to the proceedings at Pune. He further submits that Master Chinmay is taking education in a school at Jalgaon and applicant has to look after her son. Applicant has no source of income. She is dependent on her father for their maintenance. In the circumstances, Pune is not convenient

place for her and paternal family to attend to the proceedings at Pune. Learned counsel for the applicant submits that the husband has already been attending to the proceedings at Jalgaon. Having regard to the difficulties those would be faced by the applicant-wife, it would be expedient that the proceedings at Pune referred to hereinabove, are transferred to Jalgaon.

5. He further purports to draw attention to that, no maintenance is paid to the applicant and the dispute is yet pending.

6. Learned counsel for respondent, Mr. Surve, vehemently countering aforesaid submissions, contends that there may be quite a few proceedings between the parties which are pending at Jalgaon, yet, it is not always necessary that respondent-husband has to attend to the same personally. He submits that there are quite a few proceedings pending at Pune and which have been attended to through counsel by the applicant-wife.

7. Learned counsel for respondent submits that it is absolutely improper contention on behalf of applicant that she is not residing at Pune. Most of the documents show

that the applicant is staying at Pune. He further submits that economic condition of the husband is not sound, and as such, it would be expedient to direct the applicant to attend to the proceedings at Pune. The tenor of submissions on behalf of respondent is that, it is not the respondent who is responsible for deterioration in the relationship between the parties. He further submits, background of facts and circumstances would evince that the transfer is sought to harass the respondent-husband.

8. This submission on behalf of respondent is being resisted by applicant referring to that proceedings may have been initiated at Pune, however, all the proceedings have been stayed under orders of High Court.

9. Learned counsel for the respondent tenders across during the course of hearing a decision of supreme court in the case of *Krishna Veni Nagam v/s Harish Nagam* reported in *2017 Law suit(SC) 195* and draws attention to and purports to lay stress on paragraph no. 5 of the same reading, thus;

[5] On 9th January, 2017 when the matter came-up for hearing, the following order was passed:

“This petition is filed under Section 25 of the Code of Civil Procedure seeking transfer of proceedings initiated by the respondent under Section 13 of the Hindu Marriage Act at Jabalpur. According to the petitioner, who is the wife of the respondent, she will face acute hardship in contesting the proceedings at Jabalpur as she is living at Hyderabad. The petitioner has to look after her minor daughter who is living with her.

Undoubtedly under Section 19 of the Hindu Marriage Act, the petition of the present nature could be filed at the place where the marriage is solemnized or the respondent, at the time of the presentation of the petition, resides or where the parties to the marriage last resided together or where the wife is residing on the date of the presentation of the petition, in case she is the petitioner or in certain situations (as stipulated in clause iv) where the petitioner resides.

*This Court is flooded with petitions of this nature and **having regard to the convenience of the wife transfer is normally allowed.** However, in the process the litigants have to travel to this court and spend on litigation.*

Question is whether this can be avoided?

We are of the view that if orders are to be passed in every individual petition, this causes great hardship to the litigants who have to come to this Court. Moreover in this process, the matrimonial

matters which are required to be dealt with expeditiously are delayed.

In this circumstances, we are prima facie of the view that we need to consider whether we could pass a general order to the effect that in case where husband files matrimonial proceedings at place where wife does not reside, the court concerned should entertain such petition only on the condition that the husband makes appropriate deposit to bear the expenses of the wife as may be determined by the Court. The Court May also pass orders from time time for further deposit to ensure that the wife is not handicapped to defend the proceedings. In other cases the husband may take proceedings before the Court in whose jurisdiction the wife resides which may lessen inconvenience to the parties and avoid delay. Any other option to remedy the situation can also be considered.

However, before passing a final order, we consider it necessary to hear learned Attorney General who may depute some law officer to assist this Court.”

10. He further refers to section 25 of Guardian and Wards Act, 1890, and contends that the ordinary place of jurisdiction of the court would be at a place where a child ordinarily resides. He purports to contend that the documents indicate that the place of ordinary residence of

applicant and child is at Pune and in the circumstances, the proceedings of which transfer has been sought under the present application would legitimately have to be prosecuted at Pune.

11. Learned counsel for the respondent submits that although it is being submitted on behalf of applicant that the dispute about maintenance is pending before the court, yet, while proceedings for maintenance are before the court, those are not seriously prosecuted on behalf of applicant.

12. Learned counsel for respondent, therefore, urges this court not to intercept the proceedings at Pune.

13. Learned counsel for the applicant opposes the submission on behalf of respondent about her and child being resident of Pune and purports to submit that the brother of the applicant is no longer residing at Pune, and he is presently residing at Bangalore. According to him, the location of the court at Pune is at quite a long distance from his erstwhile residence.

14. While the submissions have been advanced as aforesaid on either side, one thing which perhaps appears

to be not in dispute is that master Chinmay is taking education at Jalgaon. Proceedings in respect of Chinmay's custody are sought to be transferred to Jalgaon and it appears that the applicant is presently residing at Jalgaon, albeit, it is being contended on behalf of respondent that applicant has facility of residence at Pune.

15. Further, although paragraph no. 5 of supreme court decision is being relied on by respondent, yet, the supreme court in the very same paragraph has observed, the quotation which is reproduced thus;

*“ This Court is flooded with petitions of this nature and **having regard to the convenience of the wife transfer is normally allowed.** However, in the process the litigants have to travel to this Court and spend on litigation. ”*

16. Having regard to aforesaid and looking at that, quite a few proceedings at Jalgaon are required to be prosecuted by respondent, it appears to be expedient that this proceeding may also be taken up at Jalgaon, with a rider that this proceeding at Jalgaon and dates in the matter be

so arranged at Jalgaon as would be convenient to the respondent to attend to the court proceedings at Jalgaon. Taking overall view in the matter, situation appears to call for granting Miscellaneous Civil Application with a rider aforesaid.

17. In the circumstances, Miscellaneous Civil Application stands allowed and same stands granted in terms of prayer clause (C). Proceeding bearing Miscellaneous Application no.676 of 2016, pending at Pune be transferred to the court at Jalgaon. Papers of proceeding be remitted at the earliest to Jalgaon. Dates in the matter may be arranged as would be convenient to respondent. The proceedings be disposed of as expeditiously as possible, preferably within a period of six months.

18. Rule made absolute accordingly.

19. Consequently, pending civil applications no. 14209 of 2016 and 5345 of 2017, stand disposed of.

[SUNIL P. DESHMUKH, J.]