

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

MISCELLANEOUS CIVIL APPLICATION NO.:229 OF 2016

NISHA SANJAY RAKH
VERSUS
SANJAY RAOSAHEB RAKH

...
Mr. Satyajit S. Bora, Advocate for Applicant.
Mr. Prashant M. Nagargoje, Advocate for Respondent.
...

WITH

MISCELLANEOUS CIVIL APPLICATION NO.:16 OF 2017

SANJAY RAOSAHEB RAKH
VERSUS
NISHA SANJAY RAKH

...
Mr. Prashant M. Nagargoje, Advocate for Applicant.
Mr. Satyajit S. Bora, Advocate for Respondent.
...

CORAM : **V. K. JADHAV, J.**

RESERVED ON : 23rd November, 2017.

PRONOUNCED ON: 04th December, 2017.

ORDER:

. By filing Miscellaneous Civil Application No.229 of 2016 and Miscellaneous Civil Application No.16 of 2017, the wife and the husband in the matrimonial proceedings, seek transfer of the petitions filed by them against each other pending at difference places.

2 Wife Nisha Sanjay Rakh has filed H.M.P. No.174 of 2016 before the Civil Judge Senior Division, Ambajogai for restitution of conjugal rights whereas Husband Sanjay Raosaheb Rakh has filed H.M.P. No.313 of 2016 before the Family Court at Aurangabad. Wife Nisha filed present Miscellaneous Civil Application No.229 of 2016 for transfer of H.M.P. No.313 of 2016 from the Family Court, Aurangabad to the Court of Civil Judge Senior Division, Ambajogai and the husband Sanjay has filed Miscellaneous Civil Application No.16 of 2017 for transfer of H.M.P. No.174 of 2016 pending before the Civil Judge Senior Division, Ambajogai to the Family Court at Aurangabad.

3 The learned counsel for wife Nisha submits that wife Nisha is presently residing with her parents at Parli Vajinath, District Beed. Her father is about 70 years of age and mother is around 65 years of age. They are suffering from old age ailments and in such situation, her parents are not in position to accompany her to attend the Court proceedings at Aurangabad initiated by husband Sanjay by way of H.M.P. No.313 of 2016. The learned counsel submits that wife Nisha has joined the services at Swami Ramanand Teerth Rural Medical College and Hospital, Ambajogai as a tutor and as such, she is not in a position to obtain leave every time for attending the Court

proceedings at Aurangabad. There is no other male member in the family who can accompany her to attend the Court proceedings at Aurangabad. Two sisters of wife Nisha are married. They are also in service. The learned counsel submits that wife Nisha also apprehends threat to her life at the hands of husband Sanjay and his family members and as such, it is difficult for her to attend the dates in the proceedings at Aurangabad without any companion. The learned counsel submits that it is the wife's convenience that must be looked at and the circumstances indicated above are sufficient to transfer the petition as requested. The learned counsel submits that it is difficult for wife Nisha to travel the distance of near about 250 kilometers in a day and to attend the Court proceedings at Aurangabad and to complete the return journey by crossing the same distance during the course of the day. Section 21-A of the Hindu Marriage Act, 1955 makes the provisions for transfer of petition specified in the said Section and for hearing and disposal of such petitions together by the Court in which the earlier petition has been presented. Thus, the provisions of Section 21-A of the Hindu Marriage Act, do not, in any way, exclude, affect or curtail the power conferred on this Court under Section 24 of the Code of Civil Procedure. The learned counsel submits that there are no documents placed before the Court to show

that husband Sanjay is serving at Ahmedabad in the State of Gujarat.

4 The learned counsel for wife Nisha in order to substantiate his contentions placed his reliance on the following cases:

- a) **Sumita Singh Vs. Kumar Sanjay and Anr**, reported in, **AIR 2002 SC 396 : (2001) 10 SCC 41.**
- b) **Sangamitra W/o Ramakant Royalwar Vs. Ramakant s/o Gangaram Royalwar**, reported in, **2008(6) ALL MR 1 : 2009(1) Mh.L.J. 303.**
- c) **Pramela Madhav Yeshwant Vs. Madhav Radhakishan Yeshwant**, reported in, **2010(6)ALLMR 678 : 2011(1) Bom C. R. 743.**
- d) **Mahadevi Vs. Gopal**, reported in, **2016 (4) ALL MR 599.**
- e) **Guda Vijayalakshmi Vs. Guda Ramchandra Sekhara Sastry**, reported in, **AIR 1981 SC 1143 : (1981) 2 SCC 646.**

5 The learned counsel for husband Sanjay submits that husband Sanjay is presently residing at Gujarat, which is almost 650

kilometers from Aurangabad. The learned counsel submits that the services of wife Nisha at Swami Ramanand Teerth Rural Medical College and Hospital as a tutor being temporary in nature and by efflux of time, said appointment will be discontinued. The learned counsel submits that husband Sanjay is attending the Court dates at Aurangabad from Ahmedabad (State of Gujarat) and for attending the dates at Ambajogai, he require three days to come back to his job place. The learned counsel submits that one of the sister of wife Nisha resides at Aurangabad and even her uncle also stays at Aurangabad. It is thus, not difficult for wife Nisha to attend the dates conveniently at Aurangabad. The learned counsel submits that on certain occasions, husband Sanjay was given threats by the close relatives of wife Nisha even at Aurangabad. The learned counsel submits that it is not always the husband should suffer and the husband should travel from one place to another. It would be convenient for the wife if the transportation charges are paid by the husband. The learned counsel submits that husband Sanjay is ready to pay the transportation charges to wife Nisha.

6 The learned counsel for husband Sanjay in order to substantiate his submissions placed his reliance on the following

cases:

- a) **Anindita Das Vs. Srijit Das**, reported in, **(2006) 9 Supreme Court Cases 197.**
- b) **Krishna Veni Nagam Vs. Harish Nagam**, reported in, **AIR 2007 Supreme Court 1345.**
- c) **Prakash Vs. Smt. Kavir**, reported in, **AIR 2008 Rajasthan 111.**
- d) **Balvir Singh Gurjar alias Rinku Vs. Smt. Nitu,**
reported in, **AIR 2016 Madhya Pradesh 79.**
- e) **Mamta Gupta Vs. Mukund Kumar Gupta**, reported in, **AIR 2000 Andhra Pradesh 394.**
- f) **T. Ramadevi Vs. T. V. Subrahmanyam**, reported in, **AIR 1982 Andhra Pradesh 10.**
- g) **Santhini Vs. Vijaya Venketesh**, reported in, **2017 SCC OnLine SC 1202.**
- h) **Komal s/o Nilesh Santashe Vs. Nilesh s/o Diliprao Santashe**, (decided by this Court (Coram: Nitin W. Sambre, J.) on 8th November, 2017 in Miscellaneous

Civil Application No.148 of 2017)

7 The learned counsel for husband Sanjay in the alternate submits that Civil Judge Senior Division, Beed / Family Court at Beed is the middle place for both the parties. The distance from Ambajogai and Aurangabad for reaching to Beed by road is almost the same. It is convenient for both the parties to attend the dates in the Court at Beed if both the petitions transferred to the Court at Beed.

8 Section 21-A of the Hindu Marriage Act, 1955 reads as under:

“Section 21-A Power to transfer petitions in certain cases. – (1) Where –

(a) a petition under this Act has been presented to a district Court having jurisdiction by a party to a marriage praying for a decree for judicial separation under section 10 or for a decree of divorce under section 13; and

(b) another petition under this Act has been presented thereafter by the other party to the marriage praying for a decree for judicial separation under section 10 or for a decree of divorce under section 13 on any ground, whether in the same district Court or in a different district Court, in the same State or in a different State,
the petitions shall be dealt with as specified in sub-

section (2).

(2) In a case where sub-section (1) applies,—

(a) if the petitions are presented to the same district Court, both the petitions shall be tried and heard together by that district Court;

(b) if the petitions are presented to different district Courts, the petition presented later shall be transferred to the district Court in which the earlier petition was presented and both the petitions shall be heard and disposed of together by the district Court in which the earlier petition was presented.

(3) In a case where clause (b) of sub-section (2) applies, the Court or the Government, as the case may be, competent under the Code of Civil Procedure, 1908 (5 of 1908), to transfer any suit or proceeding from the district Court in which the later petition has been presented to the district Court in which the earlier petition is pending, shall exercise its powers to transfer such later petition as if it had been empowered so to do under the said Code.”

9 Section 21-A of the Hindu Marriage Act takes away the discretion from the Court and by use of word “shall” directs the Court or the Government to consolidate for trial of two applications filed separately by the husband and wife by transferring the application filed later in point of time to the Court where the first application is filed and pending. However, there are many other situations required

consideration for transfer of such matrimonial proceedings, if pending in two different Courts and the same is dealt with by the provisions of Section 24 of the Code of Civil Procedure. Thus, the special provisions contained in Section 21-A of the Hindu Marriage Act would not oust the general power of the Court contained under Section 24 of the Civil Procedure Code. Even this legal position is also not disputed by the learned counsel appearing for husband Sanjay.

10 It further appears that the parents of wife Nisha are old aged persons. There is no other male member in the family. Wife Nisha's two sisters are married and they are also doing their job at their respective places. Furthermore, wife Nisha is also serving in the hospital at Ambajogai. It is to be mentioned here that the distance between Ambajogai and Parli Vaijnath where wife Nisha resides with her parents, is hardly 20 to 22 kilometers. However, the distance between Ambajogai to Aurangabad is near about 250 kilometers. Even though there are no documents placed on record to show that husband Sanjay is doing a job at Ahmedabad (State of Gujarat), assuming the same, it is for him to travel from Ahmedabad to Aurangabad to attend the dates in the proceedings initiated by him in the Family Court at Aurangabad. Even though husband Sanjay is

ready to pay the transportation charges, it is difficult for wife Nisha to travel such a long distance without any companion and to come back to her job place on the same day.

11 In view of the above and in the light of the submissions made on behalf of the parties, it would be convenient for both the parties to attend their respective proceedings without any obstacles in the Court at Beed. Beed is the middle place almost at the same distance from Aurangabad and Ambajogai. Though the counsel appearing for wife Nisha has expressed apprehension about some difficulties if the case is transferred to the Court at Beed, however, I do not find that the said apprehension is well founded. In the result, the following order would meet the ends of justice:

ORDER

- I. H.M.P. No.174 of 2016 shall be withdrawn from the file of the Civil Judge Senior Division, Ambajogai and H.M.P. No.313 of 2016 shall be withdrawn from the file of Family Court, Aurangabad and shall be transferred to the Court of Civil Judge Senior Division, Beed.

- II. The learned Civil Judge Senior Division, Beed shall dispose of both the matters in accordance with the provisions of law.
- III. Both the miscellaneous civil applications are accordingly disposed of.

[V. K. JADHAV, J.]

. The learned counsel for Applicant / wife in Miscellaneous Civil Application No.229 of 2016 requested this Court to stay the effect of this order for a period of six weeks from today so as to enable the wife to approach the Supreme Court. Considering the same, the effect of this order is hereby stayed for a period of four weeks from today.

[V. K. JADHAV, J.]

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