

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

MISCELLANEOUS CIVIL APPLICATION NO. 82 OF 2017

Swati Kailas Datrange

... Applicant

vs.

Kailas Pramod Datrange

...Respondent

Mr. Rohaan Cama, along with Hemal Ganatra, instructed by Ms. Usha S.Tanna, for the Applicant.

Ms. Prabha Badadare, instructed by Mr. P.R. Arjunwadkar, for the Respondent.

CORAM: S.J. KATHAWALLA, J.

DATE: 7th JUNE, 2017

P.C.

1. By this Miscellaneous Civil Application filed under Section 24 of the Code of Civil Procedure, 1908, the Applicant seeks transfer of Marriage Petition No. 1129 of 2016 pending before the Court of the Civil Judge, Senior Division at Kalyan seeking divorce and custody of the minor child of the Applicant and the Respondent. The Applicant seeks transfer of the aforesaid Marriage Petition to the Family Court, Bandra.

2. The Applicant and the Respondent were married on 8th February 2008. The parties initially resided separately from the Respondent's family members, but subsequently resided with the family members of the Respondent. There is one child born to the Applicant and the Respondent on 1st April 2014,

being a minor son by the name of “Ansh”. Various matrimonial disputes arose between the parties.

3. The Applicant wife has filed the present Application setting out various grounds for transfer of the divorce proceedings pending before the Civil Judge, Senior Division, Kalyan to the Family Court at Bandra. The Application has been opposed by the Respondent husband by filing an Affidavit in Reply, which in turn has been dealt with by the Applicant vide her Affidavit in Rejoinder.

4. The crux of the Applicant’s case as evident from the Application and the submissions made by Mr. Cama the learned Counsel appearing on behalf of the Applicant is that the Applicant is a working women, employed in a corporate at Airoli who has a minor three year old child to take care of and is not in a position to incur the time and cost that it would take to travel almost 100 kilometers and 2.5 to 3 hours each way to attend proceedings before the Kalyan Court.

5. It is submitted by Mr. Cama that it is well settled that the convenience of the wife is given more importance in matters such as these and in this case given the involvement of the minor son, it is all the more important that the convenience of the wife be duly paid heed to. Mr. Cama further submits that admittedly, as set out in the Marriage Petition (in paragraph 29), the Respondent being self-employed professes that he has flexible time to work, and therefore no

prejudice would be caused to him were he to be required to attend the proceedings in Bandra, as opposed to the Applicant having to leave her company job to attend the proceedings in Kalyan.

6. Mr. Cama further submits that the husband has already engaged lawyers in Bandra for the Domestic Violence proceedings and thus can conveniently be represented in the Bandra Family Court.

7. In response, notwithstanding the various allegations and submissions in the Affidavit in Reply, Ms. Prabha Badadare, for the Respondent urges that it would be equally inconvenient for the husband to travel to Bandra. She further submits that the proceedings filed in the Kalyan Court were prior in point in time to the Domestic Violence proceedings filed before the Bandra Magistrate's Court by the Applicant and therefore no case is made out to transfer the proceedings from the Kalyan Court to the Bandra Family Court.

8. Ms. Prabha Badadare further submits that the Respondent is required to attend his practice in Dombivli and should not be made to travel to Bandra for attending the matter.

9. Having heard the parties and having perused the pleadings, I am inclined to allow the application for transfer in light of the well settled legal position that the convenience of the wife must be duly considered while considering an Application under Section 24 of the Code of Civil Procedure, 1908. This has been reiterated in a catena of decisions of the Hon'ble Supreme

Court and recently has been reiterated in a judgment of this Court (Coram: R. D. Dhanuka, J.) in Miscellaneous Civil Application No. 81 of 2016 which was on similar facts to those prevailing in the present case.

10. Following are the reasons for my arriving at the conclusion that the inconvenience caused to the Applicant outweighs any possible inconvenience that may be caused to the Respondent and justifies the transfer of proceedings in the Kalyan Court to the Bandra Family Court:

(i) The Applicant resides at Mahim along with the minor son, Ansh. She presently is employed in a company by the name of Cap-Gemini at Airoli and it would be highly inconvenient for her to travel more than 100 kilometers daily for every hearing in Kalyan.

(ii) The minor son is kept by her in daycare near her office in Airoli or alternatively in the care of certain family members and it would be very difficult for her to find an adequate facility for the minor son's welfare was she to be required to attend the proceedings in the Kalyan Court while travelling 2.5 to 3 hours each way.

(iii) The Applicant has already filed a Domestic Violence proceedings in the Bandra Magistrate's Court and thus it would be convenient to have the

Marriage Petition transferred to the Bandra Family Court so that it can be arranged to have both matters on the same day for the convenience of both parties. This will save time and costs of both parties.

(iv) No prejudice would be caused to the Respondent husband as the Respondent husband has engaged an advocate for domestic violence proceedings and therefore will easily be able to ensure that he is represented before the Bandra Family Court, in the same area.

(v) Furthermore, it is admittedly the case of the Respondent that being self-employed he has liberty of flexible time to go to work as opposed to the Applicant who is employed in a multinational company and would therefore be considerably inconvenienced by having to repeatedly leave work and travel for several hours on each date of hearing before the Kalyan Court.

11. In light of the above, the Application for transfer is required to be allowed and I therefore pass the following order:

(a) The learned Civil Judge, Senior Division, Kalyan is directed to transmit the papers and proceedings of Marriage Petition No.1129 of 2016 to the Family Court, Bandra;

(b) The parties as well as the learned Civil Judge, Senior Division, Kalyan and the Family Court, Bandra to act on an authenticated copy of this Order;

(c) Both the parties are to appear before the Family Court, Bandra on 27th June, 2017 at 11.00 a.m. and obtain appropriate orders.

Miscellaneous Civil Application is allowed in the aforesaid terms, with no order as to costs.

(S.J. KATHAWALLA, J.)