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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

MISCELLANEOUS APPLICATION NO.179 OF 2015

Mrs.Purvi Mukesh Gada ..Applicant.

V/s.

Mukesh Popatlal Gada ..Respondent.

Ms.Edith Dey for the applicant.

Mr.Subhash Jha with Ms.Sanjana Pardeshi with Mr.Siddharth Jha
i/b. Law Global for the respondent.

CORAM: NITIN W.SAMBRE, J.

DATE : DECEMBER 14, 2017

PC. :-

The present application is for transfer of the matrimonial proceedings viz. M.J.Petition No.291/2015 from Family Court, Pune to Family Court, Bandra, Mumbai. The present application is initiated by the applicant-wife, who got married to the non-applicant on November 16, 1997. Out of the wedlock, the parties are blessed with children, who are in custody of wife.

2. In view of the marital discord, various proceedings are

initiated by the parties *inter se* in various Courts.

3. For making out a case for transfer, learned counsel for the applicant invited the attention of this Court to the hardship and inconvenience caused to the applicant-wife in attending the Court proceedings at Family Court, Pune. Learned counsel for the applicant-wife would urge that the applicant is not employed anywhere and she has no independent source of income. According to her, other proceedings are pending at Mumbai Court and as she is the custodian of minor children, greater hardship would be caused to the applicant as she is required to take care of the children. The inconvenience of the applicant is also sought to be canvassed. It is further claimed that the non applicant-husband is a builder by profession and in view of the order passed by the Court, the non-applicant is granted access to visit the children on Saturday and Sunday. Even otherwise, the non-applicant will be visiting Mumbai for the said purpose and also in other proceedings which are pending before this Court which are arising out of his business transactions. She would then urge that since August, 2017, the non-applicant-husband is in arrears of maintenance and

in view thereof, it is difficult for her to cope up with the financial pressure. She submits that the prayer for transfer accordingly needs to be allowed.

4. Learned counsel for the applicant, so as to substantiate her contentions, would rely upon the judgment in the matter of ¹*Bhartiben Ravibhai Rav V/s. Ravibhai Govindbhai* delivered by the Apex Court on May 5, 2017 so as to canvass that the inconvenience of the applicant-wife is required to be taken into account. Appropriate support is also drawn from the judgment of the Apex Court in the matter of ²*Sumita Singh V/s. Kumar Sanjay and Anr.* so as to claim that the inconvenience of the wife is of substantial consideration when an application for transfer application is to be dealt with. Apart from the above, reliance is also placed on the judgment of the Apex court in the case of ³ *Purvi Mukesh Gada V/s. Mukesh Popatlal Gada and another* so as to claim that the applicant being custodian of minor children, the said aspect will weigh in favour of the applicant-wife for the transfer of the proceedings.

1 **Transfer Petition (C) No.350 of 2017**

2 **A.I.R. 2002 SC 396**

3 **(2017) 8 SCC 819**

5. *Per contra*, learned counsel for the respondent-husband would urge from page 23 that the applicant-wife has left the non applicant and hence proceedings for divorce was initiated in 2015. The parties were in relation for last 14 years. According to him, the grounds for ordering transfer under section 24 of the Code of Civil Procedure are not made out in categorical terms. He submits that he is ready and willing to bear the expenses to be paid to the applicant-wife for attending the proceedings at Pune.

6. Learned counsel for the respondent-husband would rely upon the following judgments so as to claim that just because the applicant-wife is the custodian of the children, there cannot be a ground for ordering transfer. He submits that there is enough public conveyance *qua* trains, flight and bus available, connecting Mumbai with Pune. He would also place reliance on the judgments of the Apex Court. According to him, leniency would not weigh in favour of the applicant-wife just because she is a woman. He would urge support from the judgment of the Apex Court in the matter of ⁴*Anindita Das V/s. Srijit Das*.

4 (2006) 9 SCC 197

7. Considered the rival submissions. In view of the voluntary statement made by learned senior counsel for the respondent-husband upon instructions that he is ready and willing to share reasonable expenses towards travel and other incidental charges, the prayer for transfer is required to be considered in the said background. This Court on April 26, 2017 had directed the respondent-husband to deposit an amount of Rs.20,000/- towards travel and legal expenses to the applicant-wife, which the non-applicant claimed to have complied with.

8. So far as the claim of the applicant for transfer on the ground of hardship and inconvenience is concerned, it is to be noted that there is appropriate public conveyance with substantial frequency between Mumbai and Pune. The fact remains that the applicant-wife and non applicant resided together at Pune after their marriage. The non applicant, having volunteered that he is ready and willing to pay the conveyance and incidental charges. The Apex Court has time and again reiterated and in a recent view has observed that just because the applicant-wife is facing

hardship and inconvenience to travel, cannot be a ground for transfer merely for the asking.

9. It is to be noted that the applicant-wife is custodian of minor child. The applicant-wife has relied upon the issue of her inconvenience, particularly lack of financial independence.

10. After the marriage, the parties to the application resided together before the marital discord at Pune. No criminal proceedings involving issue of violence are pending before the Criminal Courts. It is not in dispute that there is appropriate connectivity between Mumbai and Pune so that the applicant along with her one companion can always attend the proceedings at Pune. The applicant on earlier occasion, pursuant to the order dated April 26, 2017 has attended the proceedings at Pune. She was compensated with adequate amount for conveyance and legal expenses on which count, the applicant has not raised any objection.

11. The quality of conveyance between Mumbai to Pune is

not an issue. In the wake of above, the contentions of the applicant-wife that she will be put to inconvenience and hardship hardly weighs before this Court to grant the prayer, ordering transfer of proceedings to Mumbai. The hardship of the respondent-husband is equally required to be considered, who is a businessman.

12. However, the aforesaid decision of this Court shall not put the applicant to any financial distress. The non-applicant husband is a businessman and this Court already directed the non applicant to deposit a sum of Rs.20,000/- towards the travel and legal expenses of the applicant-wife.

13. In the backdrop of the above, it will be appropriate to secure the interest of the applicant by directing the non-applicant husband to pay the amount towards conveyance, legal and incidental charges. As such the following order is passed.

ORDER

The application is allowed.

It is ordered that the respondent-husband shall deposit an amount of Rs.20,000/- within a period of six weeks from today in Marriage Petition No.291/2015 pending on the file of Family Court, Pune. The applicant, when she appears on each date of hearing, will be paid Rs.10,000/-.

The respondent-husband shall thereafter continue to deposit an amount of Rs.10,000/- on each date to which the applicant will be entitled towards conveyance and other expenses.

A single default on the part of the respondent-husband in payment of the amount as above, shall result in *ipso facto* allowing the application in terms of prayer clause (a).

With the aforesaid directions, the application stands disposed of.

(NITIN W.SAMBRE, J.)