

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

MISC.CIVIL APPLICATION NO. 247 OF 2017

...

Meghna Joshi		Applicant
V/S		
Atul Joshi		Respondent

WITH
MISC.CIVIL APPLICATION (ST) NO. 23408 OF 2017

...

Atul Joshi		Applicant
V/S		
Meghna Joshi		Respondent

...

Shri Vikram Deshmukh i/by Ativ Patel for Applicant in MCA No. 247/2017 and Respondent in MCA Stamp No.23408/2017
Ms.Jai A. Vaidya for the Respondent in MCA No. 247/2017 and for Applicant in MCA Stamp No.23408/2017.

...
CORAM : A.A. SAYED J.
DATED : 14 NOVEMBER 2017

ORAL ORDER:

Misc.Civil Application No.247 of 2017 is filed by the wife under section 24 of the Code of Civil Procedure, 1908 seeking transfer of Petition P.D. No. 21 of 2017 filed by the husband before the Family Court, Pune to the Family Court at Bandra, Mumbai. Misc.Civil Application (st) No.23408 of 2017 is filed by the husband under section 24 of the Code of Civil Procedure, 1908 seeking transfer of the Petition No.A-744 of 2017 filed by the wife before the Family Court, Bandra, Mumbai, to the Family Court at

Pune.

2. The parties were married on 26 February 2008 in Mumbai according to Hindu Vedic rites. The marriage was registered in Mumbai. After marriage the parties were initially residing in Mumbai and thereafter at Pune. However due to marital discord and differences the wife is now staying in Mumbai with her mother. Initially when the wife had left her matrimonial home at Pune, she had taken the minor daughter Anusha (presently 3 ½ years of age) with her. However, presently Anusha is in custody of the husband.

3. It is the case of the wife in her Misc. Civil Application that she has filed Petition No.A-744 of 2017 for divorce, custody and guardianship of Anusha as well as for maintenance of Anusha on 22-02-2017 under the Hindu Marriage Act, 1955. The husband filed Petition P.D.No.21 of 2017 before the Family Court, Pune for custody of Anusha on 23.06.2017 under Section 25 of the Guardian and Wards Act, 1892. The wife has filed two interim Applications in the husband's Petition No.21 of 2017 for custody and access of Anusha. As a counter blast to her Petition for custody of Anusha, the husband has filed the Petition P.D.No.21 of 2017. She is facing acute hardship contesting the Petition P.D. 21 of 2017 filed by the husband at

Pune, as she is living in Mumbai. She does not have any family in Pune and she is a single working mother and is entirely taking care of the household expenses including medical and other expenses of her aged mother without any financial support from the husband and she will be burdened with additional financial burden of travelling to Mumbai to Pune and incur further expenses on engaging lawyers in Pune Court. Whereas, the husband is a CEO and promoter of his own company and does not need anybody's permission to attend the matter in Mumbai. The husband is required to come to Mumai to contest the reliefs in her Petition No.A-744 of 2017.

4. On the other hand, it is case of the husband in his Misc. Civil Application that the wife went to Mumbai without his consent alongwith her mother and Anusha after taking up employment in Mumbai. He used to regularly visit Anusha at Mumbai. Despite all his efforts to convince the wife to return to cohabit with him in Pune, she has refused. The wife had agreed that Anusha should reside with him and her schooling should be in Pune and Anusha is presently admitted to National Millennium School in Pune and she has thus handed over custody of Anusha to him and she did not want responsibility of Anusha. Anusha is merely three and half years old and the sole responsibility of Anusha is on him and he is presently working

in Pune. He has responsibility of his aged parents. His mother has been advised regular physiotherapy with regular visit to clinic and may require surgery for slipped disc. His brother is paralytic after being affected by a massive stroke. He suffers from serious food allergies and it is very difficult for him to travel to Mumbai for every Court hearing. The wife's work profile involves travel and the wife often travels to Pune and can easily attend the Court hearings in Pune and no inconvenience or prejudice would be caused to her if the matter in the Family Court at Mumbai is transferred to Family Court at Pune.

5. I have heard the learned Counsel for the parties. It is not in dispute that the wife's Petition No.A-744 of 2017 before the Family Court at Mumbai inter alia seeks custody of Anusha and the husband's Petitioner P.D. No. 21 of 2017 before the Family Court at Pune also seeks custody of Anusha. In these circumstances, it can hardly be disputed that both the Petitions are required to be heard by the same Court to avoid any conflicting orders. It is an admitted position that the wife's Petition filed in Family Court at Mumbai was filed prior in point of time. Moreover, the wife's present Misc.Civil Application No.247 of 2017 before this Court for transfer is also filed prior in point of time to that of husband's present Misc.Civil Application (st) No.24308 of 2017. It is not in dispute that the wife is employed with a

Company in Mumbai, whereas the husband is self-employed. It is admitted by the husband that he used to regularly visit Anusha at Mumbai, when she was in custody of the wife earlier. In my view, considering the facts and circumstances of the case and the wife being a lady and in employment, she would suffer greater hardship and inconvenience if she is to travel to attend the Family Court at Pune. The grounds made out by the husband about his mother suffering from slipped disc as also about his allergies or that his brother having suffered a stroke or that he has to take care of Anusha are not sufficient to allow his Misc. Civil Application and deny the reliefs in the wife's Misc. Civil Application, particularly when the husband himself has admitted that he was earlier coming to Mumbai when Anusha was in the custody of the wife. On the husband's own showing, Anusha enjoys the company of her grandparents and paternal uncle and she is therefore emotionally very well settled. In any event, the distance between Mumbai and Pune is hardly 180 km. and the husband can easily get back to Pune by the end of the day, after he attends the proceedings in Mumbai. In the circumstances, I pass the following order:

ORDER

- (i) The Misc. Civil Application No.247 of 2017 filed by the wife is allowed. The Petition P.D. No.21 of 2017 filed by the husband before the Family Court at Pune be transferred to

the Family Court at Mumbai.

- (ii) The Misc.Civil Application (st) No.23408 of 2017 filed by the husband shall stand rejected.
- (iii) The Family Court at Pune is directed to transmit the records and proceedings of Petition P.D.No. 21 of 2017 filed by the husband to the Family Court at Mumbai.
- (iv) Both the proceedings be tagged and heard together.

(A.A.SAYED, J.)