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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

MISCELLANEOUS CIVIL APPLICATION NO.217 OF 2017

Pradip Ganesh Lele	..Applicant.
V/s.	
Mrs.Sushama Pradip Lele	..Respondent.

MISCELLANEOUS CIVIL APPLICATION (ST) NO.23002 OF 2017

Mrs.Sushama Pradip Lele	..Applicant.
V/s.	
Pradip Ganesh Lele	..Respondent.

Mr.Rajendra VPai with Mr.A.R.Pai, Mr.Akshay Pail and Ms.N.N. Thakkar i/b. Bina Rajendra Pail for the applicant.

Mr.Rahul Shivaji Kadam for the respondent.

CORAM: NITIN W.SAMBRE, J.

DATE : DECEMBER 8, 2017

PC. :-

Both these applications are preferred by the husband and wife respectively seeking transfer of the proceedings initiated *inter se* pending on the file of the Family Court, Bandra, Mumbai

and Family Court, Pune to Family Court, Bandra, Mumbai and Family Court, Pune respectively.

2. Miscellaneous Civil application No.217 of 2017, proceedings viz. Petition No.A54/2017 under section 9 of the Hindu Marriage Act, 1955 and section 7 of the Family Court, 1984 was initiated by the wife, of which the husband has sought transfer to the Family Court at Bandra, Mumbai.

3. For making out a case for transfer, learned Senior Counsel would invite the attention of this Court to the provisions of Section 16 of Civil Procedure Code and Section 10 of the Family Courts Act so as to canvass that the Family Court, Pune has no jurisdiction to try and entertain the proceedings at Pune as the property in relation to which an injunction is sought being Petition No.A54/2017, is located within the jurisdiction of Bandra Court, Mumbai. So as to substantiate this contention, he has invited attention of this Court to the order passed by this Court in Writ Petition No.1426 of 2016 filed at the behest of the wife wherein, an amendment for incorporation of the property which is the

subject matter of the above proceedings by way of amendment to the written statement-cum-counter claim came to be rejected. He would urge that the fact remains that the property never passed to the respondent in relation to which injunction is sought and as such, the proceedings needs to be transferred to Family Court, Bandra, Mumbai where the said property is located. Reliance on the Division Bench judgment of this Court in the matter of ¹*Shri Kamalakar Ganesh Sambhus V/s. Master Tejas Kamalakar Sambhus (being minor represented by his natural mother as a guardian) Sou. Suvarna Kamalakar Sambhus* was placed to draw support.

4. The said claim is opposed by the respondent-wife on the ground that it is premature to say that the proceedings initiated at Family Court, Pune are contrary to the provisions of section 16 of the Civil Procedure Code and section 10 of the Family Court Act. According to him, if there is a inherent lack of jurisdiction / territorial jurisdiction, it is always open for the Court to pass appropriate orders. To draw support, learned counsel relied on the provisions of the Protection of Women from Domestic

¹ A.I.R. 2004 Bom 478

Violence Act, 2005 and the provisions of Hindu Marriage Act to substantiate his claim that the petition is maintainable at Family Court, Pune on behest of wife. He has also claimed that there is continuity of cause of action which prompted initiation of the proceedings at Family Court, Pune.

5. In Miscellaneous Civil Application (St) No.23002 of 217 of 2017, proceedings viz. Marriage Petition No.A889/2017 was initiated by the husband under section 13(1)(ib) of the Hindu Marriage Act, 1955 on the ground of desertion for a period of more than two years as on the date of filing of the application, of which the wife has sought transfer to the Family Court at Pune.

6. It is the case of learned counsel appearing for the wife that she met with an accident and is not in a position to attend the proceedings at Bandra, Mumbai for the reason of her physical deformity and medical treatment that she is often required to take. According to him, the wife is gainfully employed at Pune and as such, it is difficult for her to travel to Bandra, Mumbai for attending the Court, besides it is an admitted position that the

husband is not employed anywhere and as such, the husband can always attend the proceedings at Pune. Therefore, learned counsel for the applicant-wife prays for transfer of the petition for divorce on the ground of desertion from Family Court, Bandra, Mumbai to Family Court, Pune having regard to the fact that the applicant is a lady and her convenience and hardship is required to be appreciated. Learned counsel for the applicant-wife tried to impress upon the Court to claim that the husband can very well travel to Pune, having regard to the regular public conveyance and connectivity available.

7. While opposing the claim, leaned senior counsel for the husband-Pradeep in the present case, would canvass and claim that if the wife can attend her employment why can't she attend the proceedings at Bandra, Mumbai. According to him, undue advantage is sought to be drawn by the wife while trying to make out a case for transfer. Learned senior counsel then would urge that having regard to the connectivity available between Pune and Bandra, Mumbai, it is easy for the applicant-wife to travel and attend the proceedings at Bandra, Mumbai. Apart from above, he

would draw support from the prayer made in the injunction application in Petition No.54/2017 wherein the wife has claimed the right to enjoy the property at Bandra, Mumbai.

8. Considered rival submissions. From the grounds, as are tried to be made out by the husband is that, the Family Court, Pune has no jurisdiction to entertain the proceedings initiated by the wife. While dealing with objections as regards the jurisdiction to try the proceedings at Family Court, Pune, it will be always open for the Family Court, Pune to go into such issue raised before it and decide the same on its own merits and pass consequential order in the matter. The issue of want of territorial jurisdiction, in my opinion, cannot be formed to be the basis for ordering transfer of the proceedings from the Family Court, Pune to Family Court, Bandra as sought to be canvassed by learned senior counsel by relying on the provisions of section 16 of the Civil Procedure Code and section 10 of the Family Courts Act. In the wake of above, prayer for transfer as is sought by the husband-Pradeep, in my opinion, is not sustainable and is liable to be rejected. The judgment that is sought to be relied upon in the matter of *Shri*

Kamalakar Ganesh Sambhus (supra) in the said backdrop can hardly have any applicablity to the facts of the present case as this Court is not required to appreciate as to whether the property is vested in the wife or not.

9. So far as the claim made by the wife for transfer of the proceedings from Bandra Court to Pune Court is concerned viz. Petition No.A889/2014 for divorce is concerned, it is to be noted that the wife is gainfully employed. This fact is not disputed between the parties. The only exception or difficulty narrated by the applicant-wife in not attending the proceedings at Pune is her medical problem and her gainful employment. If the aforesaid issues are appreciated, the fact remains that in the injunction application made by the wife, she has sought right to enjoy the property which is located at Mumbai. Apart from the above, it is not in dispute that even though the applicant-wife has met with an accident and she needs medical treatment, the fact remains that she is travelling for her employment. There is sufficient public conveyance available for travel to and fro between Pune and Bandra, Mumbai.

10. In the aforesaid background, I hardly see any reason to grant the request of the wife, seeking transfer of the proceedings. In my opinion, the applicant-wife has failed to demonstrate any substantial hardship or inconvenience.

11. In the aforesaid background, I hardly notice any substance in the prayers made in both the applications seeking transfer of the respective proceedings. Both the applications, as such, lack merit and stand disposed of accordingly.

(NITIN W.SAMBRE, J.)