

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****WRIT PETITION NO. 9858 OF 2017**

Sapana Shekhar Pokale)
Age : years Occ : Housewife,)
R/o.Flat No.402, C Wing,)
Behind Vivanta Hotel, Near MIT College,))
Near Loni Kalbhor, Tal. Haveli,)
Dist. Pune) Petitioner

VERSUS

Shekhar Pandharinath Pokale,)
Age : 30 years, Occ : Business,)
R/o. Dhayari, Near Pokale Primary School))
Survey No. 153, Pune 411 041.) Respondent

Mr.Sachin R. Pawar for the Petitioner.

Mr.Bharat J.Avasarmore for the Respondent.

CORAM : G.S.KULKARNI, J.

DATE : 14th SEPTEMBER, 2017

JUDGMENT :-

Rule, returnable forthwith. By consent of the parties, heard finally.

2. This petition under Article 227 of the Constitution challenges the order dated 10th April,2017 passed by the learned Principal Judge, Family Court at Pune whereby an application filed by the respondent husband under section 24 of the Code of Civil Procedure praying for transfer of the proceedings of P.A. No.1042/2014 from the Family Court No.5 to any other court came to be granted by transfer of the proceedings from the Family Court No.5 to Family Court No.1 at

Pune.

3. On 25th January, 2017 in the proceedings of the matrimonial petition, Civil Miscellaneous Application No.14 of 2017 came to be filed by the respondent under section 24 of the Code of Civil Procedure *inter alia* on the ground that the learned Presiding Officer of the Family Court No.5 had passed certain orders which were prejudicial to the interest of the respondent. The nature of the order was to direct the respondent to provide a rented accommodation to the petitioner at Loni Kalbhor when already an accommodation was arranged by the respondent at Sinhgad Road at Pune. The contention of the respondent was that in the whole process, the rent which was deposited by the respondent to the landlord of the Sinhgad Road premises was wasted and the applicant had suffered a loss of Rs.1,10,000/- and that additionally the Presiding Officer, Family Court No.5 had directed the applicant to pay Rs.1,05,000/- as rent from January 2016 to July 2016 at the rate of Rs.15,000/- per month. It is categorically averred in the application that because of the said orders passed by the learned Presiding Officer of Family Court No.5, injustice is caused to the applicant. It was the case of the respondent that the orders are passed in favour of the petitioner without taking into account the facts and reality of the income of the respondent and for these reasons, the respondent had no faith in the learned Presiding Officer of Family Court No.5. It is in these circumstances and on these averments, the application came to be

moved seeking transfer of the proceedings in the said proceedings from Family Court No.5 to any other court.

4. By the impugned order, the learned Principal Judge, Family Court at Pune though has observed that the basic grievance of the respondent was in regard to the judicial orders which were passed by the learned Presiding Officer of Family Court No.5 and that the same cannot be the subject matter of consideration in the section 24 application, however, proceeded to record that to maintain the faith of the litigants in the judicial process, an order to transfer the proceedings is required to be passed. Prior to the passing of the order, learned Principal Judge has also taken the consent of the learned Presiding Officer of the Family Court No.5, in as much as the learned Principal Judge called for a report from the learned Presiding Officer of Family Court No.5 wherein the learned Presiding Officer, Court No.5 recorded that he did not agree with the contentions of the respondent, however, he stated that he had no objection to transfer the proceedings to any other court. It is in these circumstances, the learned Principal Judge, Family Court at Pune had passed the impugned order. It would be necessary to note the relevant contents of this order which read thus :-

7. Thereafter, again the Court has passed an order and it was directed that applicant should give 1 BHK flat to the wife at Loni Kalbhor. It is submitted on behalf of the applicant that due to the said order, the deposit paid by him

and rent was wasted and he had to suffer a loss of Rs. 1,10,000/-. However, as per the order of the Court, it has directed to adjust the amount from the maintenance account. It is argued on behalf of the respondent that as the amount of Rs.50,000/- was adjusted from the maintenance account, the applicant did not suffer any loss. The order passed by the Family Court No.5, is a judicial order and if the applicant has any grievance, he can challenge that order in the present application, I cannot pass any comment about the judicial orders of Court Room No.5. However, I have only to see whether due to the order passed by the Court Room No.5, the applicant has lost faith on the Court ? In judicial process, faith of the litigants on the Court is very important. It seems, from the submission of the applicant that due to the order passed by the Court Room No.5, he feels that injustice was caused to him and he has no faith in the Court. In the report given by the Judge of Court No.5, he has denied the contention of the applicant but he has stated that he has no objection to transfer P.A.No.1042/2014 to any other Court till the applicant/petitioner does not want to conduct it before him. In such circumstances, I think that P.A.No.1042/2014 is required to be transferred from Court Room No.5 to any other Court. There is no harm or injustice to the respondent if petition is transferred from Court Room No.5 to any other Court. Hence, in the interest of justice, I pass the following order :-

ORDER

1. Application is partly allowed subject to cost of Rs.2,000/- payable to other side within 8 days from the date of order.
2. After deposit of cost of Rs.2,000/- P.A.No.1042/2014 be transferred from Family Court Room No.5 to Family Court Room No.1, Pune.

5. In assailing the impugned order, the learned counsel for the petitioner would submit that the learned Principal Judge of the Family Court has overlooked the settled principles of law required to be adhered in transferring judicial proceedings

from one Court to another. It is submitted that the respondent's application seeking transfer of the proceedings from Family Court No.5 at Pune to another Court disclosed no justifiable reasons, to allow the said application. It is submitted that if the respondent was aggrieved by the interim orders passed by the learned Presiding Officer of Family Court NO. 5, the proper course for the respondent was to approach the appropriate forum to challenge the said order and to move an application to transfer the proceedings to another court was totally unjustified in these circumstances. Learned counsel for the petitioner submits that the impugned order has resulted in grave miscarriage of justice, as also the impugned order suffers from a serious legal and factual perversity. On the other hand, learned counsel for the respondent has sought to justify the impugned order on the ground that after transfer of the proceedings, the learned Principal Judge has recorded evidence in as much as the cross-examination of the respondent has commenced. It is further submitted that the petitioner is not justified in pursuing this petition as the petitioner had filed MCA No. 24256 of 2017 before this Court seeking transfer of the proceedings from the Court of Principal Judge to another Court. However, the said petition was withdrawn, though all contentions of the parties on merits were kept open. It is submitted that the impugned order in the circumstances is legal and valid.

6. I have heard learned counsel for the parties. I have perused the transfer application as filed by the respondent as also the impugned order passed by the learned Principal Judge of the Family Court at Pune. In my opinion, there is much substance in the contentions as urged on behalf of the petitioner. This for the reason that it is quite apparent that the learned Principal Judge clearly acknowledges that the ground on which a transfer was being sought was the dissatisfaction of the respondent, by a reason of certain interim orders passed by the learned Presiding Officer of Family Court No.5. If this was to be the case, the question is whether jurisdiction under section 24 of the Code of Civil Procedure could have been exercised by the learned Principal Judge, which I propose to discuss hereafter. I am not persuaded by the submissions as urged on behalf of the respondent in as much as considering the nature of the order as passed by the learned Principal Judge though to some extent evidence of the parties has been recorded by the transferred court, this would not be any consequence as these proceedings remain on record. The submission that Misc Civil Application (St) No.24256 of 2017 came to be filed in this court by the petitioner seeking transfer of the proceedings from the Court of Principal Judge to another court and the same came to be withdrawn is also of no consequence in as much as the said application in my opinion can have no relevancy in the context of the challenge as raised in this petition and falling for consideration of this court. In any event the

justification as stated on behalf of the petitioner for withdrawal of the said miscellaneous application, namely that the petitioner could not have succeeded in the said application, by not challenging the order impugned in the present petition is quiet plausible. Nonetheless, it cannot be overlooked that the petitioner was not precluded from raising an independent challenge to the impugned order if the same in any manner was not satisfying the test of law and/or the same in any manner had caused a serious prejudice to the petitioner. For these reasons the objections to this petition as raised on behalf of the respondent cannot be sustained.

7. A bear reading of the impugned order itself would indicate that the learned Principal Judge, Family Court has completely misdirected herself in passing the impugned order. It is extremely unfortunate to note that the jurisdiction conferred under section 24 of the Code of Civil Procedure could be exercised on the reasons as set out in the transfer application of the respondent. As detailed above, the grievance of the respondent husband was purely in regard to the judicial orders passed by the learned Presiding Officer of the Family Court No.5, which were passed in the course of the judicial proceedings before the said Court. The respondent's case in the transfer application was that the said orders have caused a prejudice to the respondent and only on this basis, a transfer application in question came to be moved by the respondent before the learned Principal Judge.

8. If transfer applications on such reasons as moved by the respondent are entertained and allowed, it would seriously affect the solemnity and sanctity of judicial proceedings. The foremost consideration in dispensation of justice, in the judicial system, is the assurance of a fair trial. In entertaining a transfer application as filed under Section 24 of the Code of Civil Procedure, hypersensitivity of the litigant or some unjustified comfort or convenience as desired by him or some notion or presumption in the mind of the litigant alien to process of law can never form a basis for exercise of the powers to transfer proceedings. Further such fancied notions of the litigant have no place for transfer of the proceedings from one court to another. In moving such transfer application on behalf of their clients, the advocates of the parties would equally have a onerous obligation towards the court in taking a well considered decision, whether the litigant is justified in making such prayers. Such exercise on the part of the advocate would be an essential step so as to maintain the faith of the litigants in the judicial process.

9. It cannot be overlooked that in effecting transfer of the proceedings from one court to another and more so on untenable grounds, has a direct impact on other vital aspects on which the judicial officer would stand tall, with all the

judicial attributes at his dispensation namely the confidence of competence, integrity and the uprightness he wields. Undoubtedly, in a given case these judicial attributes would stand shattered, if an order is passed which otherwise judicially and justifiably cannot be passed. Such an order leads to a hard impact on the morale of the judicial officer who is unwarrantedly required to suffer such consequence. Any unjustified order passed on such casual apprehension and notions of the litigant would leave a deep scar on the judicial ethos of the judge, from whose court the case is ordered to be transferred. It is for these reasons, there is a delicate and sensitive judicial obligation, when the Principal Judge would exercise powers as conferred under Section 24 of the Code of Civil Procedure. It is, thus, in a wholly justifiable case and where the circumstances would absolutely warrant and with an object to prevent miscarriage of justice, the learned Principal Judge could have exercised these judicial powers to transfer proceedings from one Court to another and as permissible in law. Such power of transfer cannot be exercised on any casual and superfluous consideration.

10. There was no acceptable reason justifying the exercise of such judicial power to transfer the proceedings in the facts of the present case. Such order has not only caused a serious dent in the mind of the litigant who is before the court, in regard to the sanctity of the judicial proceedings, but also has affected the morale of the learned Presiding Officer of the Family Court No.5 to pass judicial orders in the

matters before him. The judicial system cannot be left to be eroded in this manner to prejudice the faith of the litigants. It is with great pain, these above observations are required to be made.

11. In these circumstances there is no alternative but to set aside the order dated 10th April, 2017 passed by the learned Principal Judge. Ordered accordingly.

12. The proceedings of the Petition No. P.A.No. 1042/2014 shall stand restored to Family Court No.5 at Pune. Needless to observe that the proceedings shall progress from where they have stopped before the earlier Court. Petition is allowed in the above terms. No costs.

13. A copy of this order be forwarded to the Principal Judge of the Family Court at Pune.

(G.S.KULKARNI, J.)