

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

**WRIT PETITION NO. 11612 OF 2017
WITH
CIVIL APPLICATION NO. 2479 OF 2017
IN
WRIT PETITION NO. 11612 OF 2017**

Mrs.Amruta Nilay Shah	...	Petitioner
V/s.		
Nilay Rajendra Shah & Ors.	...	Respondents

- Mrs.Amruta Nilay Shah, Petitioner-in-person.
- Mr.Mihir R. Govilkar a/w. Ms.Shaba Khan i/b. Govilkar & Associates for the Respondents.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 14th DECEMBER, 2017.

ORAL JUDGMENT :

1] Rule. By consent of the parties rule made returnable forthwith.

2] Heard the Petitioner-in-person and learned counsel for the Respondents.

3] The Petitioner is challenging the order dated 14th September, 2017 passed by Principal District Judge, Raigad-Alibag in

Misc. Application No.133 of 2017. By the said Application, the Respondents-Defendants had sought the transfer of the suit being Special Civil Suit No.220 of 2017 from the file of Civil Judge Senior Division, Panvel to any other Court. The said Application was filed under Section 24 of the Civil Procedure Code. The learned Principal District Judge rejected the said Application on the ground that allegations of bias are not proved, however on administrative ground, he transferred the said suit to the Court of Joint Civil Judge Senior Division, Panvel.

4] The grievance of the Petitioner is that, if the allegations of bias as per the order passed by the learned Principal District Judge, were not proved at all, then there was no reason for him to transfer the said proceedings to some other Court, like Joint Civil Judge Senior Division, Panvel and that too on administrative ground. According to the Petitioner, the Court of Civil Judge Senior Division, Panvel, where her H.M.P. No.116 of 2014 was also pending and was therefore very much seized of the controversy in the matter which was between the same parties, in the fitness of things, it would have been proper to retain the Special Civil Suit No.220 of 2017 in the same Court itself

alongwith HMP No.116 of 2014 instead of transferring the same to any other Court.

5] According to the Petitioner, the reason assigned by the Principal District Judge for transferring the said suit to another Court i.e. Joint Civil Judge Senior Division, Panvel was not correct as the only reason assigned is that, "in fitness of things I do not deem it fit that it should be tried by the same Judge, who has granted interim alimony". According to the Petitioner, when the dispute is between the same parties and more or less involves the same issues, it being a matrimonial dispute, it was always desirable that both the proceedings should be tried by one and the same Court, especially in the present case, as the prayer made by the Respondents for transfer of the suit on the allegations of bias was rejected and then without giving an opportunity of hearing to the Petitioner, this order is passed on administrative ground. It is urged that if the Petitioner was made aware that the proceedings of Special Civil Suit even if the allegations of bias are not proved, would be transferred on some other ground like administrative ground, she would have apprised the Principal District Judge as to how on administrative ground also the matter should not be transferred to some other Court.

6] Thus according to Petitioner, impugned order passed by learned Principal District Judge calls for interference at the hands of this Court so that both the proceedings between the parties can be decided in the same Court, instead of parties running from this Court to another in respect of the same or more or less the same dispute.

7] Learned counsel for Respondents has strongly resisted this petition by supporting the impugned order of the Principal District Judge by submitting that when already in H.M.P. No.116 of 2014, the Civil Judge Senior Division has passed the order of interim alimony of Rs.4,00,000/- per month, it was proper on the part of the Principal District Judge to hold that it would not be in the fitness of things that the said suit should be tried by the same Judge, who had passed the order of interim alimony in H.M.P. No.116 of 2014.

8] According to learned counsel for the Respondents, the order of granting interim alimony, which is passed by the Court of Civil Judge Senior Division and confirmed by this Court is now pending in the Special Leave Petition before the Hon'ble Supreme Court and therefore, it would not be proper to pass any order in respect of the prayer made in this Writ Petition.

9] Secondly, it is submitted that at present H.M.P. No. 116 of 2014 is again transferred, otherwise than on the application of any of the parties but on administrative ground and it is pending before the 2nd Jt. Civil Judge Senior Division. Therefore, according to the him, no purpose is going to be served by acceding to the request made by the Petitioner.

10] I have considered the submissions advanced at length by the Petitioner-in-person and by learned counsel for the Respondents.

11] The law is well settled and it is also in the fitness of things that when more than one proceedings are pending in the Court between the same parties and involve more or less the same issues, those proceedings should be tried by one and the same Court, especially when they involve matrimonial disputes. It not only avoids the inconvenience likely to be caused to the parties but it also assists the Court in arriving at proper decision and in expeditious disposal of those proceedings.

12] Here in the case, there was apparently no reason for the Principal District Judge to transfer Special Civil Suit No.220 of 2017, that too on administrative ground, when the allegations of bias were

not proved, merely on the ground that the Court of Civil Judge Senior Division has decided the application for interim alimony in HMP No.116 of 2014 between the same parties. Once the Principal District Judge has himself held that the allegations of bias are not proved, then on the very ground itself, he could not have transferred the suit from that court under the garb of “administrative ground”. Therefore, the impugned order passed by the Principal District Judge cannot be called as just, legal and correct. By passing such order, he has indirectly admitted the grievance raised by the Respondents against that Court. It cannot be the legal way to decide such application filed under Section 24 of C.P.C., when allegations of bias are held to be not proved.

13] Now considering the fact that H.M.P. No.116 of 2014 is already transferred and pending on the file of 2nd Jt. Civil Judge Senior Division, it is desirable that the Principal District Judge should bring both these proceedings i.e. Special Civil Suit No.220 of 2017 and H.M.P. No. 116 of 2014 in the same Court, preferably the Court of Civil Judge Senior Division, where the earlier proceedings of H.M.P. No.116 of 2014 and the Special Civil Suit No. 220 of 2017 were pending.

14] As regards the judgment of the Hon'ble Supreme Court

relied upon by learned counsel for the Respondent, in the case of *Criminal Appeal No. 2335 of 2014 Jagmohan Bahl & Anr. v/s. State (NCT of Delhi) & Anr.*, it pertains to the forum-shopping in respect of the bail orders when the excessive bail applications are made before the different forums. It may be true that as held in the said judgment, the principles laid down therein are also applicable in other matters, when the unscrupulous litigants can entertain the idea that they can engage in forum-shopping, a deprecable conduct in the field of law. However in the present case, it is pertinent to note that, it is not the Petitioner who has gone for the forum-shopping. It is the Respondents, who had filed application under Section 24 of C.P.C. for transfer of the suit on the allegations of bias against the Court of Civil Judge Senior Division. The Petitioner has opposed the prayer for transfer of the said proceeding from the Court of Civil Judge Senior Division to any other Court. As the Respondents had filed transfer application, the observations in the judgment of the Hon'ble Apex Court can be applicable to them and not to the Petitioner.

15] The Petitioner is ensuring that both the proceedings are heard and tried by the same Court of the Court of Civil Judge Senior Division, where the proceedings were very much pending since

beginning and from which Court, there was no reason for the Principal District Judge to transfer the one proceedings to any other Court. She is requesting the Court to ensure that these proceedings remain before the same Court of the Court of Civil Judge Senior Division, who is very much aware of the said proceedings as the Court is handling them since filing in the year 2014. Therefore, it cannot be termed as forum-shopping at all. Hence, the above authority is not of any help to the Respondents.

16] As a result, Writ Petition needs to be allowed as the impugned order passed by the Principal District Judge cannot be sustained in law.

17] The Writ Petition is allowed. Impugned order passed by the Principal District Judge of transferring Special Civil Suit No.220 of 2017 from the Court of Civil Judge Senior Division, Panvel to the Court of Joint Civil Judge Senior Division, Panvel is set-aside.

18] As during pendency of this Writ Petition, H.M.P. No.116 of 2014 is transferred to the Court of 2nd Joint Civil Judge Senior Division, the Principal District Judge is directed to pass necessary order to bring both the proceedings i.e. H.M.P. No.116 of 2014 and Special Civil Suit

No. 220 of 2017 in one Court, preferably in the Court of Civil Judge Senior Division, Panvel who is fully aware of the facts of the case and from whose Court no reason is made out to transfer any of the two proceedings.

19] Rule made absolute in above terms.

20] Writ Petition allowed in above terms.

21] In view of disposal of Writ Petition, nothing survives in the Civil Application and hence, it stands disposed of.

[DR.SHALINI PHANSALKAR-JOSHI, J.]