

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

MISC.CIVIL APPLICATION NO. 25 OF 2017

JAYASHREE CHANDRASHEKHAR PAWAR THROUGH GPA
HOLDER GUNACHANDRA MANOHAR KHAIRNAR
VERSUS
CHANDRASHEKHAR P. PAWAR

...
Advocate for the Applicant : Shri A. S. Savale
Advocate for the Respondent : Ms. Gifty George
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CORAM : RAVINDRA V. GHUGE, J.

DATED : 19th SEPTEMBER, 2018.

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PER COURT :

1. By this application, the applicant wife, who is represented by her father as a General Power of Attorney Holder, seeks transfer of Marriage Petition No. 180/2012 from the Court of the learned Civil Judge, Senior Division, Vasai, District Thane to the Court of the learned Civil Judge, Senior Division, Dhule.

2. The contentions of the applicant can be summarized as under :-

(a) The marriage between the parties was solemnized on 26/06/2011 at Dhule. An unfortunate incident occurred on

07/08/2011 when the applicant wife was found hanging to a cloth in the bathroom.

(b) The contention on behalf of the wife is that the respondent- husband and his relatives have attempted to kill the wife. Per contra, it is stated that the wife attempted suicide in the bathroom. When she did not respond to the calls of relatives for a long time, the door of the bathroom was broken open.

(c) It is an admitted position that the applicant wife was admitted in an unconscious condition in the ICU of a Hospital at Vasai and was, for a while in a, comatose state.

(d) It is an admitted position that the wife is under continuous treatment, is unable to take care of herself, is virtually rendered paralyzed and is not able to comprehend life around her.

(e) The distance between Vasai to Dhule is about 350 kms. and 2 overnight journeys are required to be undertaken by the GPA holder to attend the proceedings at Vasai by travelling to and fro from Dhule.

(f) The applicant wife was taking medical treatment in various hospitals at Vasai, Mumbai till the end of 2016 and

after the medical treatment could not bring her out of the present physical condition, her father moved her to his residence at Dhule. She requires physical assistance to perform her day to day activities as she is unable to move, understand and requires a wheel chair.

3. Reliance is placed upon the following judgments of the Honourable Apex Court in the matters of *Sumita Singh vs. Kumar Sanjay*, AIR 2002 SC 396, *Vennangot Anuradha Samir Vs. Vennangot Mohandas Samir*, 2016 (1) LJSOFT (SC) 11, *Soma Choudhury vs. Gourab Choudhaury* (2004) 13 SCC 462, *Mona Aresh Goel Vs. Aresh Satya Goel*, AIR 2000 SCW 2652, *Anjali Ashok Sadhwani Vs. Ashok Kishinchand Sadhwani*, AIR 2009 SC 1374 and *Vaishali Shridhar Jagtap vs. Shridhar Vishwanath Jagtap*, AIR 2016 SC 3584.

4. The learned Advocate for the respondent-husband submits that the Marriage Petition is pending before the concerned Court at Vasai since 2012. The respondent has to examine about 10 witnesses. Recording of oral evidence has

commenced. After 5 years of litigation, when the matter has reached the stage of recording of oral evidence, the application for transfer has been moved.

5. It is pointed out that the respondent husband is ready to pay an amount of Rs. 20,000/- per visit, of the GPA holder or the GPA holder alongwith the applicant wife, to the Court at Vasai. The said statement has been recorded by this Court in the order dated 15/02/2018. All the arrears of maintenance are paid and the respondent husband would continue to pay without any default. The travelling expenses of Rs. 20,000/- (Rs.Twenty Thousand only) per visit is not inclusive of the maintenance amount.

6. It is then submitted that it would be very cumbersome for the respondent to travel alongwith each of his witnesses and his lawyer from Vasai to Dhule, keeping in view that he has already tendered a list of 10 witnesses. All these witnesses are residents of Vasai or surrounding areas and it would be convenient for the husband to examine the witnesses even in close intervals. Considering the rival hardships and the

inconvenience that would be caused to the lawyer and witnesses of the respondent, the proceedings at Vasai can be expedited and the respondent would render utmost co-operation for the expeditious disposal of the said proceedings.

7. I have considered the submissions of the learned Advocates as have been recorded hereinabove.

8. It requires no debate that the law has been crystalized that the sufferings and hardships of the wife are to be given primary importance. It is equally true that if a husband can indicate such circumstances and can post such reasons which would evidence greater hardships and inconvenience that he is likely to suffer, a different view is possible.

9. The learned Advocate for the applicant wife does not dispute that the applicant is in a virtually paralyzed state and in any case, she is not in a condition to travel to Vasai or render any specific assistance to her Advocate. Her father, who is the GPA holder, is fully aware of her mental and physical condition. Though her father is of about 60 years of

age, he has no option, but to conduct the litigation on behalf of his daughter.

10. In these peculiar set of facts, I am of the view that as the participation of the applicant is minimum, it would be more cumbersome for the respondent husband to travel alongwith his lawyer to the Court at Dhule or search for another lawyer at Dhule and accompany his witnesses for their examination and cross-examination to Dhule. Instead of so many trips to be taken by so many people, it would be more convenient for the respondent to examine his witnesses in quick succession in the Court at Vasai, keeping in view that they are all located in and around Vasai.

11. In view of the above, this application preferred by the wife is disposed off, with the following directions which are based on statements made by the learned Advocates, on instructions, from the respective sides :-

- (a) The respondent shall not cause any default in the payment of monthly maintenance and one such default would require the payment of an additional 50 % of the

monthly maintenance for each such default.

(b) The applicant or the GPA holder or both may undertake the journey to Vasai for attending the court proceedings.

(c) For each such visit, the respondent would deposit the amount of Rs. 20,000/- (Rs. Twenty Thousand only) on the day on which the applicant/GPA holder appear before the Court and the GPA holder/applicant would be at liberty to withdraw the said amount from the Court immediately, without conditions.

(d) Since a long list of the witnesses has been submitted by the respondent, the concerned Court would consider expeditious examination of such witnesses, but subject to the convenience of the applicant/GPA holder, as the case may be.

(f) Any single default in depositing the travelling charges would entertain an additional payment of an equal sum as penalty for each default.

(g) If the respondent frequently commits a default in the payment of travelling charges or maintenance, the applicant herein would be at liberty to move a fresh

application under Section 24 of the Code of Civil Procedure for seeking transfer of proceedings.

(h) If any amount towards maintenance/travelling charges has been deposited before the Court at Vasai or in this Court by the respondent and has not been withdrawn by the applicant, as well as the amount deposited by the respondent in this Court under various orders, can be withdrawn by the GPA holder under identification of the learned Advocate, from the Court alongwith accrued interest.

(i) The said amount shall be adjusted as against the visits already undertaken.

(RAVINDRA V. GHUGE, J.)

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