

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

MISC. CIVIL APPLICATION NO. 234 OF 2017

Sow. Jyoti W/o Bramhaprakash Rankhamb
Age : 31 years, Occu. Service,
R/o. C/o. Shatrughna Kawale,
Sneh Sawali, Limboli Bagh, Tambri Vibhag,
Osmanabad, Tq. & Dist. Osmanabad .. Applicant

VERSUS

Shri. Bramhaprakash S/o Shivajirao Rankhamb
Age : 33 years, Occu. Service,
R/o. Osmanabad
At present R/o. Kotla Colony, Aurangabad
Tq. & Dist. Aurangabad .. Respondent

...
Mr. A.P. Gawad, Advocate for applicant
Mr. Hemant Surve, Advocate for respondent
...

CORAM : SUNIL P. DESHMUKH, J.
DATE : 13-07-2018

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard learned counsel for the parties finally, by consent.

2. This is an application pursuant to section 24 of the code of civil procedure, 1908, for transfer of proceedings filed by respondent bearing petition no. A-458 of 2017 pending before the family court at Aurangabad, to family court at Osmanabad.

3. Learned counsel for applicant submits that wedding had taken place at Osmanabad in 2014 according to Hindu rights. Immediately after the marriage, applicant had to undergo surgery at Pune in 2014 and father of applicant had to bear huge expenses to the tune of Rs.1,90,000/-. Members of her matrimonial family did not accompany applicant at Pune and Osmanabad. There had been ill-treatment to her. Subsequently, a daughter has been begotten from the relationship. Daughter was born at Osmanabad. Matrimonial side had never visited to see the child after the birth although it was at Osmanabad. After some time, she had been for co-habitation to her matrimonial house. However, she was not accepted. There had been some demand. It is further being submitted that the daughter is now 2-1/2 years old. Although, the applicant is working in a bank, it is at Osmanabad. The situation is such, it is very difficult for her to attend to the proceedings at Aurangabad. She faces many difficulties including that of traveling to Aurangabad.

4. Learned counsel for the applicant, with a view to support his request, places reliance on an order passed by Supreme Court in the case of *Archana Singh V. Alok Pratap Singh* reported in (2000) AIR (SCW) 4951 and has submitted that

reimbursement of expenses of visits to Aurangabad, would not attenuate the difficulties and inconvenience faced by the applicant.

5. On the other hand, Mr. Hemant Surve, learned counsel appearing for respondent vehemently submits that if at all inconvenience is to be seen, inconvenience to other side as well will have to be looked into. He submits that looking at the nature of employment of the respondent, it is very difficult for him to take out time, to go to attend proceedings at Osmanabad, where transfer had been sought. He, therefore, submits that inconvenience, contended because of child, can be met with since respondent will not insist upon presence of child at Aurangabad.

6. He submits that Supreme Court in the case of *Harita Sunil Parab Vs. State of NCT of Delhi and others* reported in 2018 AIR (SC) 1624, has referred to a decision in the case of *Gurcharan Das Chadha Vs. State of Rajasthan* reported in (1966) 2 SCR 678, wherein it has been considered that convenience of the parties does not mean convenience of the petitioner alone who approaches the court on misconceived notions of apprehension. Convenience for the purposes of transfer means convenience of the prosecution, other accused, the witnesses and the larger interest of the society.

7. He further purports to buttress the submission with the decision of this court dated 04-12-2017 in the case of *Nisha Sanjay Rakh Vs. Sanjay Raosaheb Rakh* in Miscellaneous Civil Application no. 229 of 2016 and *Sanjay Raosaheb Rakh Vs. Nisha Sanjay Rakh* in Miscellaneous Civil Application no. 16 of 2017, wherein according to him, it has been considered that petitions can be transferred to a central place, as has been ordered in that case. According to him, both the applicant and respondent were employees and had means of earning and in the circumstances, having regard to the considerations that have weighed with the court, the court had thought it fit that the matters be transferred to a middle place like Beed. He submits that Beed appears to be a middle place even in this case.

8. While learned counsel for respondent has submitted so, one may have to look into the factual aspect that respondent as well as applicant, appear to be originally from Osmanabad. Marriage had taken place at Osmanabad. Parents on either side are residents of Osmanabad. The child has been begotten at Osmanabad and the applicant is serving at Osmanabad, maintaining her child.

9. In the circumstances, although, learned counsel for respondent has submitted that there would not be any insistence on presence of child at Aurangabad, it may have to be looked at that child is 2-1/2 years old and would require company of mother all along. The Supreme Court in the very decision on which reliance has been placed by learned counsel for respondent *Harita Sunil Parab Vs. State of NCT of Delhi and others (supra)*, has adverted to that, no universal or hard and fast rule can be prescribed for transfer of petition, which always will have to be decided on the facts of each case. Convenience of a party may be one of the considerations *albeit*, it may not override all other considerations.

10. In the present case, overall factual situation, it appears, shows that inconvenience suffered by the applicant would be more in the process. In the circumstances, it appears to be expedient to accede to the request of transfer made under the Miscellaneous Civil Application. Miscellaneous Civil Application is, therefore, allowed in terms of prayer clause (B) and is disposed of.

11. It would be appropriate that the proceedings, on transfer, be proceeded with expeditiously and preferably disposed of within a period of six (6) months from date of receipt of writ at the end of the transferee court.

12. The parties to appear before the transferee court on 30-07-2018.

13. Rule is made absolute accordingly.

[SUNIL P. DESHMUKH]
JUDGE

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