

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

MISC. CIVIL APPLICATION NO. 144 OF 2018

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|---|---|-------------------------------|
| 1. Smt. Irene Blanch Khera, |] | |
| Age 41 yrs., Occu. Household, |] | |
| For herself and on behalf of her minor |] | |
| daughter. |] | |
| 2. Miss Samaira Keira Glenn Souza Ticlo |] | |
| Age 10 yrs., Occu. Student, |] | |
| Both R/o. E-15, Nirmala Colony, |] | |
| St. John Baptist Road, |] | |
| Mount Mary Steps, Bandra (W.), |] | |
| Mumbai - 400 050. |] | <u>... Applicants.</u> |

Versus

Shri Glenn John Vijay	]	
Ambrose e Sousa Ticlo	]	
Age 56 yrs., Occ. Business & Politician,	]	
R/o. Flat No.C-12/T-8, Palmarinha,	]	
Porbavaddo, Calangute,	]	
Bardez, Goa - 403 516.	]	<u>... Respondent.</u>

- Mr.Samarth Raju Moray for the Applicants.
- Mr.Ashwin Bhose a/w. Mr.Sachin Desai, Mr.Edith Dey, Mr.Ulhas Naik & Mr.Mikhail Dey for the Respondent.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

RESERVED ON : 3rd JULY, 2018.

PRONOUNCED ON : 19th JULY, 2018.

JUDGMENT. :

1] This Application is filed under Section 24 of the Code of Civil Procedure (*for short hereinafter referred as, "C.P.C."*) for transfer of Matrimonial Petition No.84/2018/C, filed by the Respondent in the Court of Civil Judge, Senior Division, Mapusa, North Goa to the Family Court, Bandra, Mumbai.

2] Applicant No.1 is the legally wedded wife of the Respondent, their marriage being registered as per the Civil Registration Services of Goa at Civil Registration Office, Bardez, Goa on 14/07/2006. After that they got married in the 'Church' at Goa on 24/12/2006. It was a love marriage. Out of the said wedlock, Applicant No.2 daughter is born, who is at present of the age of 10 years. Applicant No.1 and Respondent since the marriage and Applicant No.2 since her birth were residing at Goa and Applicant No.2 was studying in the school there.

3] It is the case of Applicant No.1 that she has to flee the house of the Respondent at Goa, as she faced the serious threats to her safety and the safety of her daughter. She had made three complaints to that effect against the Respondent to the local police station but of no avail, as Respondent being a sitting MLA is an influential person there. Hence, as the Respondent has also threatened to kidnap

Applicant No.2, she has come to Mumbai and reside along with Applicant No.2 in the studio apartment at Bandra. She is trying to take admission of the Applicant No.2 in the school at Mumbai. However, when Respondent got knowledge of the same, he has filed Matrimonial Petition No.84/2018/C against her, in the Court of Civil Judge, Senior Division at Mapusa, Goa, in which he has also obtained the order of temporary injunction restraining Applicant No.1 from taking admission of Applicant No.2 in any of the school at Mumbai.

4] The contention of Applicant No.1 is that Mapusa, Goa is at the distance of 555 kilometers from Mumbai and therefore, she along with her daughter will not be in a position to effectively prosecute the said proceeding in Mapusa. Moreover, the Respondent is a wealthy businessman and politically influential person, being a sitting MLA of Aldona Constituency; whereas, Applicant No.1 is a housewife and has no family support. She also apprehends serious threats to her life and also the kidnapping of her daughter, if she is required to travel to Goa to contest the said proceeding. Hence, she has filed this Application for transfer of the said proceeding from the Court of Civil Judge, Senior Division, Mapusa, Goa to the Family Court at Bandra, Mumbai.

5] This Application is resisted by the Respondent by his 'Affidavit-in-Reply', challenging the maintainability of this Application

in this Court. It is submitted that the Application under Section 24 of the C.P.C. in terms of the Goa Civil Courts Act, is required to be filed before the Court of the Principal District Judge at North Goa, District Panaji and this Court cannot have the jurisdiction to entertain such Application. Further, it is submitted that, in terms of *the High Court at Bombay (Extension of Jurisdiction to Goa, Daman and Diu) Act, 1981*, a permanent bench of the Bombay High Court to Goa, Daman and Diu came to be established and Chapter 6 of Part 6 of the provisions of the Constitution were made applicable to the High Court of Bombay with regard to its jurisdiction over the Union Territory of Goa, Daman and Diu and the said Bench was vested with the powers for hearing of cases in respect of the State of Goa, Daman and Diu, except in the event of the Chief Justice ordering otherwise.

6] As per Section 12 of the Goa, Daman and Diu Civil Courts Act, the term 'High Court at Mumbai' having jurisdiction over Union Territory of Goa, Daman and Diu came to be substituted and therefore, in terms of the said provision, this Court would have no jurisdiction to entertain any Application for transfer in respect of the proceedings which are filed before the Court of the Civil Judge, Senior Division Court at Mapusa, as the said Court comes under the exclusive jurisdiction of the Goa Bench of this Court.

7] It is also contented that as the Respondent is of Goan origin and as the marriage of Applicant No.1 and Respondent has been registered under the provisions of the Law of Marriage embodied in the Portuguese Civil Code 1867, only the Court of the Civil Judge, Senior Division at Mapusa, Goa, has the jurisdiction to try and determine the matrimonial petition in terms of law applicable thereto. Therefore such proceedings cannot be transferred out of Goa, considering the separate provisions of the Civil Code applicable thereto. It is submitted that the Matrimonial Petition No.84/2018/C is filed under Article 137, 138 and 141 of the Portuguese Civil Code as applicable in the State of Goa which governs the parental control during subsistence of marriage. Therefore, the said petition having been filed under a Special Law in force in the State of Goa in the terms of *the Goa, Daman and Diu (Administration) Act, 1962*, it cannot be decided or heard by the Court outside the Goa. On this ground also, it was submitted that the Family Court at Bandra does not have the jurisdiction to try matrimonial matters of persons of Goan origin in the matters of Article 137, 138 and 141 of the said Act.

8] As regards the merits of the Application, it is denied that there is any apprehension of threat to the life of Applicant No.1 at the hands of the Respondent. It is also denied that the Respondent has in

any way attempted to kidnap Applicant No.2 or there was any cause for Applicant No.1 to file the complaints with the police. It is submitted that the Applicants and the Respondent are the permanent residents of Goa. Applicant No.2 was very much studying in the school at Goa. Only with an oblique intention and motive Applicant No.1 has left the Goa with Applicant No.2 and brought her to Mumbai without any reasons. Therefore, the Respondent was constrained to file proceeding before the Court of Civil Judge, Senior Division at Mapusa for declaration that he alone is entitled to exercise parental control over Applicant No.2 and for injunction restraining Applicant No.1 from taking 'admission' of Applicant No.2 in any of the school in Mumbai.

9] According to the Respondent, he is having very cordial relations with his daughter and hence, there is no substance in the allegations of his causing any harm to his daughter or even to Applicant No.1, if they are required to attend the Court at Mapusa in Goa. Respondent has therefore prayed for dismissal of this Application on both the counts, for its non-maintainability and being sans any merit.

10] According to learned counsel for the Applicants, however, this Application is very much maintainable in this Court, this Court being the common High Court for the two States of Maharashtra and

Goa. It is submitted that just as Nagpur Bench of this Court can transfer the proceeding lying outside its exclusive judicial districts to the judicial districts in its jurisdiction and *vice-versa*, then no exception can be made in respect of this High Court's Bench at Panaji, Goa also. This Court can very well avail its jurisdiction and there is no bar at all in that respect.

11] Learned counsel for the parties have in support of their respective contentions relied upon the provisions of *The Goa, Daman and Diu Reorganization Act, 1987*, and the various judgments of this Court and the Hon'ble Supreme Court.

12] Now discussing first the submission of learned counsel for the Respondent to the maintainability of this Application at the Principal seat of the High Court at Bombay on the ground that such Application can be tenable only in the High Court Bench at Panaji, Goa, as the trial Court i.e. the Court of Civil Judge, Senior Division, Mapusa, from which the transfer of the proceeding is sought, comes under the exclusive jurisdiction of the Goa Bench, as rightly submitted by learned counsel for the Applicant, this issue can not be any more debatable in view of Section 3 and 4 of *the High Court at Bombay (Extension of Jurisdiction to Goa, Daman and Diu) Act, 1981*, which read as follows:-

"Section 3 : Extension of jurisdiction of Bombay High Court to Goa, Daman and Diu -

(1) On and from the appointed day, the jurisdiction of the High Court at Bombay shall extend to the Union territory of Goa, Daman and Diu.

(2) On and from the appointed day, the Court of the Judicial Commissioner shall cease to function and is hereby abolished:

Provided that nothing in this sub-section shall prejudice or affect the continued operation of any notice served, injunction issued, direction given or proceedings taken before the appointed day by the Court of the Judicial Commissioner, abolished by this sub-section, under the powers then conferred upon that Court.

Section 4 : Jurisdiction of Bombay High Court -

On and from the appointed day, the High Court at Bombay shall have, in respect of the territories included in the Union territory of Goa, Daman and Diu, all such jurisdiction, powers and authority as, under the law in force immediately before the appointed day, are exercisable in respect of the said territories by the Court of the Judicial Commissioner."

13] Section 9 of the said Act makes things further clear by providing that :

"Section 9 : Establishment of a permanent bench of Bombay High Court at Panaji - On and from the appointed day, there shall be established a permanent bench of the High Court at Bombay at Panaji and such Judges of the High Court at Bombay, being not less than two in number, as the Chief Justice of that High Court may, from time to time, nominate, shall sit at Panaji in order to exercise the jurisdiction and power for the time being vested in that High Court in respect of cases arising in the Union territory of Goa, Daman and Diu:

Provided that the Chief Justice of that High Court may, in his discretion order that any case or class of cases arising in such territory shall be heard at Bombay."

14] After Goa became a State on 30th May, 1987 on coming into force of the Goa, Daman and Diu Reorganization Act, 1987, this Court became a common High Court for the State of Maharashtra and the State of Goa Section 20 of the said Act lays down that;

"Section 20 : Common High Court for Maharashtra, Goa, Dadra and Nagar Haveli and Daman and Diu -

(1) On and from the appointed day,

(a) there shall be a common High Court for the States of Maharashtra and Goa, and for the Union territories of Dadra and Nagar Haveli, and Daman and Diu, to be called the High Court of Bombay (hereinafter referred to as the common High Court);

(b) the Judges of the High Court of Bombay (hereinafter referred to as the existing High Court), holding office immediately before that day shall, unless they have elected otherwise, become, on that day, the Judges of the common High Court.

(2) The expenditure in respect of the salaries and allowances of the Judges of the common High Court shall be allocated amongst the State of Maharashtra and Goa and the Union in such proportion as the President may, by order, determine.

(3) On and from the appointed day, the common High Court shall have, in respect of the territories comprised in the State of Maharashtra and Goa and the Union territories of Dadra and Nagar Haveli and Daman and Diu, all such jurisdiction, powers and authority as, under the law in force immediately before the appointed day, are exercisable in respect of those territories by the High Court of Bombay.”

15] Section 26 of the said Act then provides that the Principal Seat of the common High Court shall be at the same place at which the Principal Seat of the existing High Court is located immediately before the appointed day. Therefore, what was earlier Bench of this Court at Panaji, Goa, it became now the Principal Seat of the common High Court for the State of Goa.

16] The question, whether it has changed the position as such in respect of exercise of the jurisdiction by the Principal Seat at Goa for the State of Goa and the Principal Seat at Mumbai for the State of Maharashtra came for consideration before the Full Bench of this Court in the case of *Edward Evan Pereira and Anr. V/s. Goncalo Jose Agnelo and Anr.*¹ wherein, in the light of the issues raised before it and after considering the provisions of Section 3 of *the High Court at Bombay (Extension of Jurisdiction to Goa, Daman and Diu) Act, 1981*, it was held that by virtue of this provision, the jurisdiction of the High Court at Bombay, including even the jurisdiction under the Letters Patent, was extended to the Union Territory of Goa, Daman and Diu. It was further held that by virtue of the provisions of Section 20, 25 and 27 of the said Act, the High Court of Bombay being the common High Court for the State of Maharashtra and the State of Goa, the same jurisdiction, including the jurisdiction under the Letter Patent, is exercisable by the High Court of Bombay sitting at Panaji, Goa, which is exercisable by the High Court of Bombay at its Principal Seat at Bombay and its Benches at Nagpur and Aurangabad.

17] This judgment, thus, makes it clear that the High Court of Bombay, being a common High Court for the State of Maharashtra and

¹ MANU/MH/0943/2011, 2011(5) Mh.L.J. 550

the State of Goa, the same jurisdiction including the jurisdiction under the Letters Patent is exercisable by the High Court of Bombay sitting at Panaji (Goa), which is exercisable by the High Court of Bombay at its Principal Seat at Bombay and its Benches at Nagpur and Aurangabad. Therefore, if the Principal Seat of the High Court at Bombay can transfer the proceedings pending in the judicial Districts in exclusive jurisdiction of its Benches at Aurangabad or Nagpur, then it follows that the Principal Seat of High Court at Bombay can also transfer the proceedings which are lying within the exclusive jurisdiction of its Seat at Goa, as both the Courts viz. the Court in which proceedings are pending and the Court to which the proceedings are to be transferred are subordinate to the common High Court. The provisions of Section 20 of the Goa, Daman and Diu Reorganization Act, 1987 are clear to the effect that the High Court of Bombay is the common to both the State of Maharashtra and the State of Goa. Hence, there cannot be any distinction in exercise of jurisdiction in respect of the proceedings lying in the territories within the jurisdiction of the Principal Seat at Bombay and the proceedings lying in the exclusive jurisdiction of its Seat at Goa.

18] This position is further made clear by the decision of the Nagpur Bench in the case of *Sangamitra w/o. Ramakant Royalwar*

*V/s. Ramakant s/o. Gangaram Royalwar*² wherein also the similar issue was raised before the Nagpur Bench, as to, whether the Bench at Nagpur has jurisdiction to transfer the matrimonial petition filed by the Respondent against the wife to another Court, when such proceeding was pending in the judicial districts of the exclusive jurisdiction of the Bench at Aurangabad and Principal Seat at Mumbai. While deciding the said question, in paragraph No.17, it was held that, "*in view of Rule 1 of Chapter XXXI of the Bombay High Court Appellate Side Rules, 1960, the Bench of the Bombay High Court at Nagpur has the jurisdiction and competence to take cognizance of such Applications*". Thus, the objection to that effect was overruled. Hence, it follows that if the Nagpur Bench is having the jurisdiction to transfer the proceedings, which are lying exclusively within the jurisdiction of another Bench, may be at Aurangabad or Principal Seat at Bombay, then the Principal Seat Bombay is required to be held as having the jurisdiction to transfer the proceedings pending exclusively within the jurisdiction of its Seat at Goa.

19] In this respect, learned counsel for the Applicant has also placed reliance on the judgment of the Andhra Pradesh High Court in the case of *Chalasani Deepthi V/s. Chalasani Krishna Chaityanya*³. In

2 MANU/MH/0841/2008, 2009(1) Mh.L.J.303

3 MANU/AP/1056/2015, 2016(5) ALD 165

that case also, the petition was filed for withdrawal and transfer of the proceedings filed by Respondent-husband for 'Restitution of conjugal Rights' pending on the file of Family Court at Ranga Reddy District at L.B. Nagar to the Family Court at Vijayawada. The objection to the jurisdiction of the Andhra Pradesh High Court was taken on the ground that the said Court is not vested with jurisdiction to transfer the case pending in the State of Telangana to the State of Andhra Pradesh. It was contended that the jurisdiction to transfer the cases pending from one High Court or Civil Court in one State to a High Court or Civil Court of any other State is vested with Hon'ble Supreme Court as per Section 25(1) of C.P.C..

20] However, while rejecting the said contention, the Andhra Pradesh High Court has taken in to consideration the provisions of *Section 30 of Andhra Pradesh Reorganization Act, 2014*, which are *pari materia* to the provisions of *the High Court at Bombay (Extension of Jurisdiction to Goa, Daman and Diu) Act, 1981*, and it was held that having regard to the provisions of Section 22, 23, 24, 25 of C.P.C. with regard to transfer of suits or proceedings, what is clearly postulated is that the High Court of Judicature at Hyderabad being the common High Court for the State of Telangana and the State of Andhra Pradesh, the Court at Hyderabad can exercise jurisdiction, not only in the State of

Telangana but also throughout the Territories of the State of Andhra Pradesh. It was held that the power of superintendence conferred under Article 227 of the Constitution of India over the Courts by the High Court is deemed to extend to the Territory of Andhra Pradesh also and in such view of the matter, the said Application was held to be maintainable. It was further held that as in the instant case, both the Courts, the one from which the matter was sought to be transferred and the one to which they were to be transferred being sub-ordinate to the Court of Andhra Pradesh of Hyderabad and the said Court being the High Court of Judicature for both the states of Telangana and the State of Andhra Pradesh, the High Court at Hyderabad has the Territorial Jurisdiction to deal with the matters of the State of Telangana and the State of Andhra Pradesh.

21] Here, in the case also, the Court of Civil Judge, Senior Division, Mapusa, where the proceedings are pending and the Family Court, Bandra, where the proceedings are sought to be transferred, are both the Courts subordinate to this Court, therefore, this Court which is a common High Court for both the State of Maharashtra and the State of Goa, is having the jurisdiction to decide this Application under Section 24 of the C.P.C..

22] As regards the contention that in the State of Goa, the matrimonial petition is filed before the Court of Civil Judge, Senior Division, Mapusa under Article 137, 138 and 141 of the Portuguese Civil Code, as applicable in the State of Goa, which governs the parental control during subsistence of the marriage and therefore, the said petition having been filed under the Special Law in force in the State of Goa, the Family Court at Bandra cannot have the jurisdiction to try such matter, learned counsel for the Applicant has placed reliance on the judgment of the Hon'ble Apex Court in the case of *Vinisha Jitesh Tolani @ Manmeet Laghmani V/s. Jitesh Kishore Tolani*⁴ wherein the similar contention was advanced that the annulment proceeding cannot be heard outside the State of Goa, in view of the existing laws which made the Civil Code and the law relating to marriage applicable to the persons residing within the State of Goa. It was observed by the Hon'ble Supreme Court that even if it were to be held that it is the customary law of the land which would prevail over the personal law of the parties, the same could not be a bar to transfer of the matter outside the State of Goa to any other State. What would be of relevance is that they would be governed by their personal laws notwithstanding the fact that their proceedings

4 MANU/SC/0308/2010, AIR 2010 SC 1915

are conducted outside the State of Goa. Here, in the case, therefore merely because the proceedings are conducted at Family Court, Mumbai, it will not affect the applicability of the personal laws or the Special Civil Laws, which are applicable to the parties and under which they are governed.

23] This brings me to the merits of the Application. Applicant No.1 is admittedly a lady. Applicant No.2 is the minor daughter of 10 years age of Applicant No.1 and Respondent. Even if, one need not go into the merits of the allegations and counter allegations between the spouses, the fact remains that the Applicant No.1 has filed three complaints with police against Respondent expressing apprehension of serious threat to her safety and the safety to her daughter. Since May 2018 she is therefore staying along with her daughter at their studio apartment in Bandra. It is needless to state that, the Applicant Nos.1 and 2 will therefore both face difficulty and inconvenience and also the apprehension to their physical safety, if they are made to travel to Mapusa, Goa on each and every date when the proceeding in the Court at Mapusa are to take place. Hence, in order to avoid the inconvenience to the Applicant No.1, the wife and Applicant No.2, her minor daughter, which is recognized as a ground for transfer of proceeding from one Court to another under Section 24 of the C.P.C.,

in view of the judgment of the Hon'ble Supreme Court in the case of *Sumita Singh V/s. Kumar Sanjay*⁵, it becomes essential to allow this Application, so that both the Applicants can effectively contest the said proceedings and fight out the matter on merits.

24] As a result, this Misc. Civil Application is allowed and following order is passed.

- (a) *Matrimonial Petition No.84/2018/C filed by the Respondent before the Civil Judge, Senior Division, Mapusa is transferred to the Family Court, Bandra, Mumbai.*
- (b) *The Civil Judge, Senior Division, Mapusa is directed to transfer the record and proceedings of Marriage Petition No.84/2018/C to the Family Court, Bandra, Mumbai, immediately.*
- (c) *Registry to inform the concerned Courts and do the necessary formalities accordingly.*

[DR.SHALINI PHANSALKAR-JOSHI, J.]