

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISCELLANEOUS CIVIL APPLICATION No. 326 OF 2017

Sonali Jagdish Garud

... Applicant

Vs.

Jagdish Vasantrao Garud

... Respondent

Mr. Prosper D'souza i/b. Mr. Rajendra Anbhule, Advocate for the applicant.

Mr. D.D. Rananaware i/b. Mr. Pravin Nalawade, Advocate for the respondent.

CORAM : **MRS.MRIDULA BHATKAR, J.**
RESERVED ON : **24th April, 2018.**
PRONOUNCED ON : **4th May, 2018.**

ORDER:

This Application is moved by the applicant/wife under section 24 of the Code of Civil Procedure for transfer of Marriage Petition 227 of 2010 which was filed by the respondent/husband for divorce before Civil Judge Senior Division, Karad, District Satara to Civil Judge Senior Division, Pune. The applicant has filed Application No. 210 of 2013 under Domestic Violence Act before Judicial Magistrate First Class, Pune.

2. The learned counsel for the applicant submitted that the applicant/wife has no source of income. He submitted that the distance between Pune and Karad is 170 kms. It is difficult for the

applicant to travel from Pune to Karad to attend the Court dates. He further submitted that the respondent/husband has filed Marriage Petition No. 227 of 2010 before Civil Judge Senior Division, Karad, District Satara, however, unscrupulously he showed that the Petition was served on the applicant and by misleading the Court, the Petition was decided ex-parte on 6th July, 2011. The learned counsel has further argued that after having knowledge of this ex-parte decree, the applicant immediately moved to the concerned Court and got that ex-parte decree set aside by order dated 19th January, 2017 and thus, the Marriage Petition is again revived. He has submitted that in between, the respondent has remarried. The conduct of the respondent is very objectionable and therefore, the Petition is to be transferred from the Court of Civil Judge Senior Division, Karad to the place where applicant/wife is residing. In support of his submissions, the learned counsel has relied on the following judgments of Hon'ble Supreme Court:

- (i) Sumita Singh vs. Kumar Sanjay & Anr.¹
- (ii) Roopali Saxena vs. Amit Saxena²
- (iii) Krishna Veni Nagam vs. Harish Nagam³

1 AIR 2002 SC 396

2 (2004) 13 SCC 495

3 (2017) 4 SCC 150

3. The learned counsel for the respondent has submitted that the Marriage Petition is pending before Civil Judge Senior Division, Karad and the cases filed by the applicant under the Domestic Violence Act are before the Judicial Magistrate First Class, Pune. He submitted that the respondent/husband is remarried after the Marriage Petition filed by him was decreed on 6th July, 2011, however, the decree was set aside by order dated 19th January, 2017. The respondent/husband is ready to give her travel expenses whenever she is attending the Court matter from Pune to Karad.

4. Perused the Application, papers filed before this Court of the proceedings before the trial Court and Appellate Court. Marriage Petition No. 227 of 2010 was allowed ex-parte and it was restored on 19th January, 2017 on merit but in between the respondent remarried. The applicant has filed the case under Domestic Violence Act which is pending before Judicial Magistrate First Class. The respondent is attending the matter before Judicial Magistrate First Class, Pune. The respondent is employed. The applicant/wife though earlier was employed but now she has left the job.

5. In the case of **Sumita Singh**(*supra*), the Application for transfer

of matrimonial proceedings from Ara, Bhojpur was filed in the Supreme Court. The wife was residing in Delhi and therefore, it was not possible for her to travel up and down from Delhi to Ara, Bhojpur, which is distance of 1100 kms. In the said case, the husband was unemployed and husband has filed a suit against wife, so for wife's convenience, the matter was transferred to District Judge, Delhi. In the present case, the husband is employed and wife is unemployed.

6. In the case of **Roopali Saxena** (*supra*), the petitioner/wife sought transfer of Divorce Petition filed by the respondent/husband from Family Court Indore to Family Court, Jhansi. The wife was not given maintenance. The Hon'ble Supreme Court considered that wife has no source of income as well as maintenance was not paid, so it transferred the matter. In the present case, the husband can be ordered to pay sufficient amount towards her travel and other miscellaneous expenses on each Court date.

7. In the case of **Krishna Veni Nagam** (*supra*), the petitioner wife has moved an application for transfer of proceedings from the Family Court, Jabalpur, Madhya Pradesh to the Family Court, Hyderabad, Andhra Pradesh. The wife has filed Petition under Domestic

Violence Act at Hyderabad and husband has Divorce Petition in Jabalpur like the present case. However, petitioner Krishna was looking after minor daughter of the couple and it was not possible for her to undertake long journey and contest proceedings by neglecting minor child. The Hon'ble Supreme Court has held that in a civil proceeding, the plaintiff is the dominus litis but if more than one court has jurisdiction, the court can determine which is the convenient forum and lay down conditions in the interest of justice. The Supreme Court also has taken a view that as the said matter was pending in the Court for about 3 years, the prayer of transfer was allowed by giving directions in paragraph 18 of the said judgment. In paragraph 18, the Court has laid down certain safeguards:

(i) Availability of video conferencing facility

(However, this judgment was referred thereafter by the Full Bench in the judgment of Santhini vs. Vijaya Venketesh, reported (2018) 1 SCC 1. The Supreme Court has given different direction in respect of video conferencing.

(ii) Availability of legal aid service;

(iii) Deposit of cost for travel, lodging and boarding in terms of Order 25 CPC.

- (iv) E-mail address/phone number, if any, at which litigant from outstation may communicate.

8. Thus, the facts of the said case are different. There was major issue of convenience of minor child. However, in the judgment of **Krishna Veni Nagam** (*supra*), the Supreme Court has referred to the doctrine of *forum non conveniens*. The Court has also observed that instead of proceedings being transferred, the husband shall pay travel, lodging and boarding expenses of the wife and/or person accompanying for each hearing. It also observed that the transfer petitions filed by the wives being almost mechanically allowing is that they are not denied justice on account of their inability to participate in proceedings instituted at a different place on account of difficulty either on account of financial or physical hardship.

9. Thus, considering the law laid down by the Hon'ble Supreme Court as mentioned above and the facts and circumstances of the present case, I am of the view that the Application is to be dismissed, as no specific ground is shown or case of inconvenience is made out. Thus, the order with following direction is appropriate:

- (i) Miscellaneous Civil Application is dismissed;

- (ii) The respondent/husband shall pay the travel expenses and other Miscellaneous expenses of Rs.1,800/- to the applicant/wife for her each trip from Pune to Karad to attend the Court dates.

(MRIDULA BHATKAR, J.)