

VPH

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION No. 355 OF 2017

Shalini Tushar Lunkad	...	Applicant
Vs.		
Tushar Shantilal Lunkad	...	Respondent

Smt. Seema Sarnaik, for the Applicant.

Mr. Karl Tamboly, Ms. Alya Khan, Samrudhi Chotani i/b Vashi & Vashi, for the Respondent.

CORAM : A. M. DHAVALA, J.
DATE : AUGUST 21, 2018

PC :-

1. Applicant-wife residing at Cuffe Parade, Mumbai seeks transfer of petition, viz. Petition A – 280 of 2017 filed by her husband in the Family Court at Pune to the Family Court at Bandra. Admittedly, both the parties were residing at Pune when they were on good terms. The husband is an industrialist, having several companies. The wife is also one of the Directors of the company. After the relations were strained, wife is residing in a flat of one of the companies at Cuffe Parade,

Mumbai. Her brother-in-law has filed FIR on behalf of the company for evicting her on the ground that she has made encroachment. Thereafter, she has filed maintenance proceedings in the Family Court at Bandra. In ***Sumita Singh, Petitioner Vs. Kumar Sanjay Singh & Anr.***¹, it is laid down that normally convenience of the wife is to be looked at.

2. Learned advocate Ms. Alya Khan, appearing for the husband relies on ***Anindita Das, Petitioner Vs. Srijit Das, Respondent***². In this case, it was observed that when leniency was shown to the wife by the court, very often it was being misused and taken advantage by the wife and therefore, the petition should be considered on its own merits. The court in that case observed that parents of the wife were capable of taking care of her child. When she was moving everywhere and had no difficulty in attending the Court at Delhi. The particulars of ground of ill health were not given. The respondent offered her AC train ticket for herself and for one companion, and the

1 AIR 2002 SC 396

2 (2006) 9 SCC 197

stay expenses of the petitioner and her companion in a 3-star hotel. In the light of those facts, it was held that transfer of the petition was not required.

3. Further, reliance is placed by the learned advocate for the Respondent on the judgment in the case of ***Gayatri Mohapatra, Petitioner Vs. Ashit Kumar Panda, Respondent***³.

In this case, wife has sought transfer of petition, filed by her husband from Meerut to Cuttack (Orissa State). It was found that she was traveling from one place to another in connection with her family business. Hence, said ground was not accepted. The wife in the present case has claimed that she has no place to reside in Pune and her husband has given threats that she should not come to Pune. Therefore, she has filed maintenance proceedings in Family Court, Bandra. Her husband is also having several offices in Mumbai. Learned advocate for the husband states that there is only one office in Mumbai. She also submits that wife is having jewelry business in Pune. Learned advocate for the Applicant-wife says that she was doing the said

³ (2003) 11 SCC 731

business before separation and now she is not doing any business.

4. After hearing the parties, I find that the Applicant-wife is residing in Mumbai. Though, there is criminal proceeding taken up for her stay in the flat so far, there is no threat that she would be evicted from the said flat. The husband is appearing in the proceeding which is filed in Family Court Bandra for maintenance by the wife. The husband has affluent financial condition, whereas the wife has no source of income and therefore, she has filed maintenance proceedings. Considering the fact though there is no positive material about threats, I find that as the husband has not made any offer to bear the expenses of traveling and stay at Pune, it will be convenient to transfer the said petition to the Family Court at Bandra. Considering all above facts, I follow the ratio of the judgment in the case of *Sumita Singh (supra)*. Hence, the following order:

- (i) Misc. Civil Application is allowed;
- (ii) The marriage petition being Petition No. A 280 of 2017 pending on the file of Family Court No. 5,

Pune is transferred to the Family Court No. 7, Bandra. The learned Judge of the Family Court No. 7 Bandra shall take up the matter for hearing simultaneously with Petition (Lodging) No. 28511 of 2017.

- (iii) The records and proceedings of the marriage petition being Petition No. A 280 of 2017 pending on the file of Family Court No. 5, Pune be sent to the Family Court No. 7, Bandra, immediately.
- (iii) Parties are directed to remain present before the Family Court No. 7 at Bandra on 17th September, 2018 at 11.00 a.m.
- (iv) The order of interim stay shall continue to operate till 17th September, 2018.
- (v) Both the parties agree that the matter can be settled through mediation. The learned Judge, Family Court No. 7 at Bandra shall appoint mediator in the matter.
- (vi) Misc. civil application is disposed of in the aforesaid terms.

Sd/-
[A. M. DHAVALE, J.]