

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

MISCELLANEOUS CIVIL APPLICATION NO.36 OF 2018

Smt.Swati Mahesh Pathak ... Applicant

Vs.

Shri Mahesh Dinkar Pathak ... Respondent

Mr.P.S. Dani, Senior Advocate i/b Leena Patil for the Applicant
Mr.G.R. Hegde for Respondent

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: APRIL 4, 2018**

P.C. :

1. This application is moved u/s 24 of the Civil Procedure Code for transfer of the Marriage Petition for divorce bearing No.A-1013 of 2017 which is filed by the respondent/husband u/s 13(1)(ia) of the Hindu Marriage Act. The applicant/wife has filed this application on the ground that she is a patient of various ailments including physical as well as mental problems. The respondent/husband appearing in this matter and has filed his affidavit in reply dated 20.2.2018 contesting this application.
2. Mr.Dani, learned Senior Counsel appearing for the applicant/wife, has submitted that the applicant is undergoing

medical treatment and he relied on the medical certificate dated 17.7.2017 given by one Dr.Rahul Nerlikar, Orthopaedic Surgeon at Pune. The learned Senior Counsel has pointed out that she is suffering from backpain, recurring episodes of vertigo, spinal problem and she is advised to avoid travel especially travelling alone. The learned Counsel has pointed out the allegations made in the marriage petition by the husband that the respondent has shattered personality and is emotionally insecure. There are also allegations that she is unable to manage her psychological issues and has ailments of hypothyroidism and migraine. The learned Counsel has further submitted that these allegations support the case of the applicant for transfer of the marriage petition from Mumbai to Pune as the applicant is not able to travel alone from Pune to Mumbai to attend the Court dates.

3. The learned Senior Counsel further submitted that the respondent/husband has driven her out of the matrimonial house at Mumbai and thereafter she has been staying in Pune. He further submitted that in fact, in the year 2014, the respondent/husband has filed a petition for divorce in the Family Court at Pune. However, he subsequently withdrew the said

petition. He has filed this second petition for divorce in the Family Court at Bandra on the ground that the earlier petition was withdrawn for a possibility of reconciliation. However, it could not be materialised and so, he is constrained to file the second petition for divorce. The learned Senior Counsel has submitted that this shows that in fact the applicant has been residing in Pune since then and the respondent/husband ought to have filed the second petition in the Family Court at Pune. He has further submitted that though the respondent/husband is aware of the physical and mental condition of the wife, he has intentionally filed this petition for divorce in the Family Court at Bandra. The learned Counsel has further submitted that if the hardship is weighed, then, the applicant/wife will be suffering more than the respondent/husband. He submitted that this application be therefore, allowed and the petition be transferred from Mumbai to Pune.

4. Per contra, learned Counsel appearing for the respondent/husband, has submitted that the respondent is serving and has a job in Mumbai. Earlier, he was posted in Pune and, therefore, he had filed a petition for divorce in Pune. However, now he is posted in Mumbai and the couple has resided together

in Mumbai. The respondent/husband has rightly filed the petition in the Family Court, Bandra, Mumbai. The learned Counsel has submitted that the applicant/wife in fact has attended the Family Court proceedings at Bandra on 3 dates i.e., 10.10.2017, 2.12.2017 and 20.2.2018 and has participated in marriage counselling. He has further submitted that the applicant is residing in a row-house owned by the respondent/husband and he has also kept a vehicle at her disposal. It is further submitted that the respondent/husband is transferring Rs.35,000/- per month for her expenses and she also receives rent of Rs.15,000/- from a house of the respondent at Pune which was let out by him. So also, the respondent has given a credit card of ICICI Bank to the wife with a limit of Rs.7,500/- and also she has been using an ATM card of Rs.7,500/- of Allahabad bank. Thus, it comes to a total amount of Rs.65,000/- per month towards her expenses. The learned Counsel further submits that the respondent has to discharge his official duty at Mumbai and hence, it is not possible for him to travel to attend the Court dates at Pune.

5. Mr.Dani denies the payment of Rs.65,000/- by the respondent/husband to the applicant/wife.

6. Heard submissions of the learned Counsel for both the sides. Perused the papers placed before the Court, especially the contents in the Marriage Petition filed by the respondent/husband and also the medical certificate issued by the Orthopaedic Surgeon Mr.Rahul Nerlikar in favour of the applicant/wife. There are allegations in the divorce petition of psychosomatic and physical problems against the applicant/wife.

7. The certificate issued by Dr.Nerlikar discloses that the applicant/wife is suffering from orthopaedic problems of spinal cord, spondylosis, etc. and therefore, she is advised to avoid travel and especially travelling alone. This certificate is issued in July, 2017. Thereafter, the applicant/wife has attended three dates in the Family Court, Bandra. The distance between Mumbai and Pune is now hardly three hours. Considering the financial support, as stated before the Court, given by the respondent/husband to the applicant, the applicant/wife can hire a driver and a maid to make her travel comfortable. So far as the mental health is concerned, the contents in the Marriage Petition are the allegations made by the party and they are yet to be proved. It is pointed out in the course of arguments that the applicant/wife is a

Law graduate. She may be having some psychological issues or mental trauma. However, these facts are yet to be proved before the Family Court. Further, the fact remains that the applicant/wife has attended three dates before the Family Court Counsellor and nothing is placed on record to show that on those dates, any untoward incident causing her either physical or mental trauma has taken place.

8. I place reliance on the finding in the case of **Krishna Veni Nagam vs. Harish Nagam**¹ in which the Supreme Court has referred to the doctrine of *forum non conveniens* under which the court exercises its inherent jurisdiction to stay proceedings at a forum which is considered not to be convenient and there is any other forum which is considered to be more convenient for the interest of all the parties at the ends of justice. In the present case, though the applicant/wife has pleaded that she is physically and mentally not fit to attend the Court, as she has attended the Family Court thrice. The respondent / husband has provided her vehicle for transport so also sufficient amount of maintenance. He can be ordered to pay Rs.2,500/- towards petrol charges on each date. So far as convenience is concerned, the applicant is a non-

¹ (2017) 4 SCC 150

working lady and the children are major, staying independently at Pune and on the other hand, the respondent/husband is employed and holding a post of responsibility in the Government of Maharashtra and, therefore, he will have to do more adjustment in his duty to attend the Family Court at Pune, if the matter is transferred there. Thus, after weighing the convenience of both the parties, I am of the view that the application is without merit. I do not find any good and sufficient ground to allow this application so as to transfer this matter from Mumbai to Pune. Hence, the following order is passed:

ORDER

- i) The application is rejected.
- ii) The Respondent / husband is however directed to pay to the Applicant / wife an amount of Rs.2,500/- towards petrol charges on each date at the Family Court, Bandra.

9. Miscellaneous Civil Application is disposed of accordingly.

(MRIDULA BHATKAR, J.)