

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

MISC.CIVIL APPLICATION NO.123 OF 2018
(Vaishali w/o Sandipan Kamble Vs. Sandipan Shankarrao Kamble)

Mr.A.D.Soman, Advocate for the applicant.
Mr.H.V.Tungar, Advocate for the respondent.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 18/03/2019

PER COURT :

1. The applicant / wife prays for transfer of Petition No.A-113/2018 from the learned Family Court, Aurangabad to the learned Family Court at Pune.

2. On 02/07/2018, this Court had issued notice and had passed the following order :-

*"1. Issue notice to respondent, returnable on 30th July, 2018.
2. Learned counsel for applicant urges for interim relief stating that the respondent, in fact, had been staying with them till January, 2018 and all of a sudden respondent-husband left company of family members and shifted to Aurangabad. It appears, he has chosen Aurangabad to file proceeding bearing Petition No.A-113 of 2018, before Family Court, Aurangabad with a view to vex applicant. He submits that applicant is suffering from cancer and it is difficult for her to attend to the*

proceeding pending before Family Court, Aurangabad and she has no means of earning.

3. In the circumstances, till the returnable date, there shall be ad-interim relief in terms of prayer clause (C).

4. In addition to the court process, applicant shall serve the respondent privately by any legally acceptable mode and file an affidavit with tangible proof of service at least two days before the returnable date. In case of failure to serve the respondent and to file service affidavit as directed, ad-interim relief as has been granted would cease to operate."

3. It is also contended by the applicant that the respondent has turned alcoholic and is a retired Police Officer. It is not possible for the applicant to travel to Aurangabad since it would require two overnight journeys to travel from Pune to Aurangabad and return after attending the Court proceedings.

4. The submissions of the learned Advocate on behalf of the respondent/husband are as under :-

[a] The applicant has now recovered from her ailment.

[b] The applicant is active on social networking websites and travels to various places.

[c] The applicant/wife can ride a bullet motorcycle.

[d] The applicant had made an attempt to seek employment in United States of America and in the process, an agent by

name Paresh Pandya has defrauded her for an amount of Rs.80,000/-.

[e] There is no difficulty for the applicant to travel to Aurangabad.

[f] The mother of the respondent, who is about 87 years of age, is residing with him at Aurangabad and she cannot be left alone at home if the respondent is compelled to travel to Pune.

5. The Law in such cases has crystallized in the following judgments :-

- (i) *Vennangot Anuradha Samir Vs. Vennangot Mohandas Samir- 2016 (1) Bom.C.R.250,*
- (ii) *Soma Choudhuri Vs. Gourab Choudhuri (2004) 13 SCC 462,*
- (iii) *Anjali Ashok Sadhwani Vs. Ashok Kishinchand Sadhwani, AIR 2009 SC 1374*
- (iv) *Vaishali Shridhar Jagtap vs. Shridhar Vishwanath Jagtap - 2016 AIR (SC) 3584*
- (v) *Sayali Swapnil Kuber Vs. Swapnil Harischandra Kuber- [2014(1) Mh.L.J. 584],*
- (vi) *Nilima Vs. Pavansingh - LEX (BOM)2011 9 193 and*
- (vii) *Shila Nitin Rajure Vs. Nitin Marotiappa Rajure - MCA No.184 of 2017 (Aurangabad Bench), dated 9.1.2018.*

6. The convenience of the wife in such cases is to be given a preference, is the settled position of Law. If the husband can assign such reasons which would convince any prudent person that he

cannot leave his place of residence and travel for litigation, the case can be looked at in a different way.

7. In the instant case, the respondent, who has retired as a Police Officer, is worried about his aged mother, who is residing with him. There is a controversy between the parties as regards the place of residence of the son of the respondent, who is a married person, though unemployed. The applicant insists that the son resides at Aurangabad and his wife belongs to Aurangabad. The respondent insists that the son resides in Pune.

8. Notwithstanding the above, it cannot be overlooked that the applicant is a Cancer patient. It cannot be predicted that she has been completely cured of the said ailment, unless the treating hospital issues such a medical certificate.

9. Considering the balance of convenience and the comparative hardships which the rival sides are likely to suffer, I find that the Law laid down by the Hon'ble Apex Court in the matter of **Vennangot Anuradha Samir (supra)** would apply to this case. In the said matter, the wife was suffering from Cancer and the Hon'ble Apex

Court ruled that the husband would have to spend for her treatment and she cannot be tired out in litigation and by deprivation of financial support.

10. In the light of the above, I find that prejudice and inconvenience alongwith hardships would cause more suffering to the applicant/wife rather than the husband. The husband can surely arrange for a domestic help, who could take care of his mother on the day he travels to Pune for attending the proceedings.

11. In the light of the above, this application is allowed. Petition No.A-113/2018 shall stand transferred from the Family Court, Aurangabad to the Family Court, at Pune. The litigating sides would appear before the Family Court, Pune on 05/04/2019 and formal notices need not be issued.

(Ravindra V.Ghuge, J.)