

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 36 OF 2019

DEEPA RAMNATH LOTLIKAR., ... Petitioner

Versus

RAMNATH ANAND LOTLIKAR., ... Respondent

Mr. Ashwin D. Bhole, Advocate for the Petitioner.
Mr. Menino Teles, Advocate for the Respondent.

Coram:- C. V. BHADANG, J.

Date:- 25th March 2019

P.C.

Learned Counsel for the petitioner seeks leave to convert the petition into an application under Section 24 of the Civil Procedure Code. Liberty granted. The office to appropriately re-register the petition.

2. By this application under Section 24 of the Code of Civil Procedure Code, the petitioner is seeking transfer of Regular Civil Appeal No.100/2016 from the file of the learned Adhoc District Judge at Mapusa to the District Court, South Goa, at Margao.

3. The parties were married on 24.04.1992. However, it appears that the marriage ran into rough weather shortly

thereafter and the respondent filed a suit against the petitioner for dissolution of marriage way back in the year 1996 being Matrimonial Petition No.10/1999/A(Old Special Civil Suit No.134/1996/A). It took 20 long years for disposal of the petition and the learned Senior Civil Judge at Mapusa by a Judgment and Order dated 20.08.2016 has decreed the said petition thereby dissolving the marriage between the parties by a decree of divorce. The petitioner feeling aggrieved has challenged the same before the Adhoc District Judge at Mapusa in Regular Civil Appeal No.100/2016 which she now wants to be transferred to the learned District Court at South Goa at Margao on the ground that she is residing at Margao.

4. I have heard Mr. Bhobe, the learned Counsel for the petitioner and Mr. Teles, the learned Counsel for the respondent.

5. I am conscious of the fact that in a matter of the present nature, the convenience of the wife has to be seen as it takes precedence. However, this is a case where the petitioner is not seeking transfer of the original petition which is already decided but an appeal arising therefrom. Admittedly, the District Court at Margao does not exercise Appellate jurisdiction over the Courts at Mapusa. In my considered view, such a transfer would not be permissible for the reason that by virtue of such transfer, this Court cannot confer jurisdiction on a Court where there exist

none. It is well settled that such a transfer can only be made to a Court which would otherwise have jurisdiction to hear and decide the matter either by way of original proceedings or an appeal arising therefrom. The territorial jurisdiction of the District Court at Margao, is defined and does not extend to Mapusa where the impugned judgment and order is passed. Thus, the District Court at Margao cannot be asked to examine the legality of the judgment and decree passed by a Court which is beyond its territorial jurisdiction. Although Section 24(5) of CPC provides that a suit or a proceeding may be transferred from a Court, which has no jurisdiction to try it, it would be practically a matter of first principle, that the suit or such proceeding can only be transferred to a Court which is having jurisdiction to try, hear and decide it. Thus, such transfer cannot be made to a Court which lacks such jurisdiction. Such lack of jurisdiction may be pecuniary or relating to subject matter or territorial nature, as in the present case.

6. Mr. Bhobe, the learned Counsel for the petitioner has placed reliance on the decision of the Supreme Court, in the case of KULWINDER KAUR @ KULWINDER GURCHARAN SINGH VS. KANDI FRIENDS EDUCATION TRUST & ORS. (2008) 3 SCC 659, which, in my considered view, is misplaced. There cannot be any manner of dispute with the proposition that under Section 24 of the CPC, this Court has wide powers to

direct transfer. However, the exercise of such power would invariably depend upon facts and circumstances of each case.

7. Mr. Bhobe, the learned Counsel for the petitioner submitted that the original petition for dissolution of marriage could lay before the Trial Court at Margao and, therefore, the Appellate Court at Margao would be entitled to entertain the appeal.

8. I am afraid the contention cannot be accepted for the reason that in the present application I am not concerned with the transfer of the original petition but of an appeal arising from the order of the Trial Court at Mapusa.

9. In the result, the application is hereby dismissed.

C. V. BHADANG, J.

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