

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISC.CIVIL APPLICATION NO.55/2019

Mrs.Reshma Aniket Pawar Applicant.
Vs.
Mr. Aniket Anand Pawar ... Respondent.

Advocate Mrs. Bhairavi A. Ranpise for applicant.
Mrs. Veena J. Kamble for respondent.

CORAM : K.K.TATED, J.
DATED : JULY 8, 2019.

P.C.

Heard learned counsel for parties.

2. By this application u/s 24 of C.P.C. applicant/wife is seeking transfer of Marriage Petition No.82/2017 filed by respondent/husband u/s 13(1)(ia)(ib) of Hindu Marriage Act, 1955 before Civil Judge, Senior Division at Ratnagiri to Family Court at Bandra, Mumbai.

3. Learned counsel for applicant submits that it is very difficult for applicant to travel from Mumbai to Ratnagiri to attend the matter filed by respondent/husband. She submits that at present applicant is residing at Mumbai with her

parents. She submits that applicant is unemployed and do not have any source of income. She submits that her both parents are senior citizens. She submits that they are also not keeping well. She submits that nobody is there in the family to support her and/or accompany her to attend the matter at Ratnagiri. She submits that the applicant/wife has already filed reply before Ratnagiri Court stating that there is apprehension to her life from respondent /husband. In support of her submission, she relies on reply dated 11.1.2018 in Marriage Petition No.82/2017.

4. Learned counsel for applicant submits that, financially it is not possible for applicant to attend each and every date at Ratnagiri, by spending huge amount on travelling. Hence, in the interest of justice, this court be pleased to transfer Marriage petition no.82/2017 pending before Civil Judge, Senior Division, Ratnagiri to Family Court, Bandra, Mumbai. In support of her contention, learned counsel for applicant relies on following authorities.

A)Smt. Nanda Kishori Vs. SB Shivaprakash, AIR 1993 Karnataka 87. Para 11, 12 and 13 reads thus;

11. It is but natural for a party in such circumstances to make a plea to the courts of equity to transfer the proceeding to a place where they would be in a best position to defend their case and in the instance case, wife who has

sought transfer of the matrimonial proceedings from Bangalore where she has no moorings to a place wherein she is leading life of destitution with her aged parents could be characterised as either perverse, vindictive or based on no materials.

12. In spite of the assurances held out by the husband if the wife is not willing to take the opportunity of attending the court at Bagalkot on the date of hearing there must be strong reason for her behaviour and conduct. It appears to me that there are only two reasonable probabilities and they are that she is unwilling to join her husband or that she is mortally afraid of stepping into Bagalkot for fear of losing her life. As already mentioned she seems to be a victim of fear psychosis I do not think it would be either fair or reasonable to compel her to attend the court at Bagalkot by the force of an order to be passed by this court.

13. As such, with a view to promote substantial justice, in the absence of disentitling factors or just circumstances, this petition seeking transfer from Family Court Bangalore to jurisdictional Court at Hubli deserves to be allowed.

B) C.S. Shyamala VS. C.S. Srikantaiah AIR 1990 Karnataka 146.

C) K.R. Srinathi V. H. Ramakrishnan AIR 1990 Madras 330

5. Learned counsel for applicant submits that in all these matters, the Court held that convenience of wife to be seen at the time of deciding application u/s 24 of CPC. He submits that in view of abovementioned facts and law declared by High Court, this Court be pleased to allow present application. He submits that if application is not allowed, irreparable loss will be caused to applicant/wife.

6. On the other hand, learned counsel for respondent/husband, vehemently opposed present application. She submits that in Marriage Petition No.82/2017, applicant appeared and filed her reply dated 11.1.2018 through advocate. She submits that applicant already appointed advocate Mr. V.V. Pawaskar to defend her case before Ratnagiri Court, therefore, there is no question of transferring the said case from Ratnagiri to Mumbai.

7. Learned counsel for respondent submits that respondent is working as an Agent in Regional Passport office at Ratnagiri. She submits that it is very difficult for him to attend the matter at Mumbai, if it is transferred. She submits that respondent have to take care of his mother who is not keeping well and she is senior citizen.

8. Learned counsel for respondent/husband submits that financial position of applicant is good. She submits that applicant is an educated lady. She can earn money. Not only that, she can travel alone from Mumbai to Ratnagiri. Therefore, there is no question of allowing present application, filed by applicant u/s 24 of CPC. She submits that if present application is allowed, it will be very difficult for respondent to attend matter at Mumbai and defend same.

9. I heard both sides at length. It is to be noted that in the present proceeding, at present applicant is a household wife. She is staying with her parents at Mumbai. Both the parents are senior citizens and not keeping well. Apart from that, applicant also placed on record some medical papers to show that she is also not keeping well. It is to be noted that, to travel from Mumbai to Ratnagiri, applicant has to travel 8 to 10 hours i.e. over night journey.

10. It is to be noted that, in the matter of Smt. Nanda Kishori Vs. SB Shivaprakash and C.S. Shyamala Vs. C.S. Srikantaiah, cited supra, the High Court held that, convenience of wife to be seen at the time of deciding application u/s 24 of CPC. In case in hand, applicant is

staying with her parents who are not keeping well and also are senior citizens. Apart from that, applicant is a household wife. As on today, she is not doing any business. Considering these facts in the interest of justice, in my opinion petition filed by respondent is required to be transferred to Mumbai.

11. Hence, the following order.

A) Miscellaneous Civil Application is allowed in terms of prayer clause (a) which reads thus,

a) That this Hon'ble Court be please to transfer, the Marriage Petition No.82/2017 filed in the Court of Civil Judge, Senior Division at Ratnagiri for Dissolution of Marriage between the petitioner and respondent hereinabove, to the Family Court, Bandra, Mumbai.

B) No order as to cost.

C) Misc.Civil Application dispose of accordingly.

(K.K.TATED, J.)

