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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
MISC. CIVIL APPLICATION ST. NO. 9797 OF 2019
IN
PETITION NO. D-102 OF 2018

Mrs. Dipti Abhishek Khedekar	..Applicant
Vs.	
Mr. Abhishek Pramod Khedekar	..Respondent

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Shri Rahul S. Kadam for applicant.
Shri P.s. Chavan for respondent.

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CORAM : M.S.KARNIK, J.
DATE : 5th APRIL, 2019

P.C. :

Heard learned Counsel for the applicant and learned
Counsel for the respondent.

2. This is an application for transfer of the Petition pending on the file of learned Family Court at Bandra to the Court at Kalyan.

3. Undisputed facts are, the marriage between the applicant – wife and respondent – husband was solemnized at Thane on 26/2/2011. Out of the said wedlock, a son was born

on 13/12/2013. It appears that some matrimonial disputes arose between the applicant – wife and respondent – husband and since 29/9/2018, the applicant-wife is residing with her parents at Kalyan.

4. The respondent-husband filed Petition bearing No.D-102 of 2018 in the Family Court at Bandra for custody of the minor son Master Hridhaan. Thereafter, the applicant-wife filed the proceedings before Kalyan Court sometime on 13th November, 2018. She filed Marriage Petition No.1461 of 2018 for divorce. She also filed an application bearing No.174 of 2018 in Kalyan Court under the Domestic Violence Act. The applicant-wife on 2/2/2019 filed FIR bearing C.R.No.24 of 2019 with Bazar Peth Police Station, Kalyan.

5. Learned Counsel Shri Kadam for the applicant-wife submitted that the applicant is residing with her aged parents at Kalyan. She has to take care of her aged parents. He submits that she does not have a brother. Apart from parents, she also has to look after her minor son Master Hridhaan. Learned

Counsel Shri Kadam would submit that she had to give up her job as it was not possible for her to continue with her employment on account of her family issues and now that she has to look after her parents and welfare of her minor son Master Hridhhan. He would further submit that it would be very difficult for the applicant-wife to travel from Kalyan to Bandra and attend the proceedings. In his submission, since the applicant-wife has filed two proceedings at Kalyan, the custody Petition which has been filed by the respondent-husband can be heard by the same Court at Kalyan. He would submit that it is the convenience of the applicant-wife that is to be seen.

6. Learned Counsel for the petitioner relied upon the decisions of the Hon'ble Apex Court in the case of **(1) Neelam Kanwar v/s. Devinder Singh Kanwar reported in (2000) 10 SCC 589** and **(2) Sumita Singh vs. Kumar Sanjay and another reported in AIR 2002 SCC 396** in support of his contention that it is the convenience of the wife which has to be considered for transfer of the cases at the place where wife presently resides.

7. Learned Counsel for the respondent-husband on the other hand would point out that the couple was staying together till 28th September, 2018. On 29th September, 2018, the applicant-wife left the matrimonial home along with the minor son. Immediately thereafter the respondent-husband filed the Petition for custody of minor son at Family Court at Bandra. He would submit that the couple was residing together at Nahur. The son then was taking education in Jr.KG at a school in Bhandup which is close to Nahur. It is his contention that without his knowledge the custody of the minor son was removed when the wife left the matrimonial home.

8. Learned Counsel would submit that the decisions relied upon by learned Counsel for the petitioner are in respect of transfer of those cases where the wife was residing far away from the place where the proceedings were filed by husband. In the present case, he would submit that the wife is staying at Kalyan which is not very far away from Bandra and therefore, the question of inconvenience to the wife does not arise. In any

case, he would submit that he had filed custody proceeding first in point of time and as a counterblast the applicant-wife has initiated several proceedings and even filed FIR against him.

9. Heard learned Counsel for the parties.

10. There is no dispute that the parties were staying together at the matrimonial home at least till 28th September, 2018. It is further not in dispute that initially the minor son was taking education in Jr. KG at a school in Bhandup which is near Nahur where the couple was residing. It is the only on 29th September, 2018 that the applicant-wife left the matrimonial home along with the minor son. It is further not in dispute that even the admission to Jr.KG was then taken in a school at Kalyan on 14th November, 2018. The respondent-husband filed proceedings for custody of minor son in the Family Court at Bandra on 13th October, 2018. The notice in respect of the said proceeding was received by the applicant-wife on 7th November, 2018. Thereafter, the applicant-wife appeared in the Family Court at Bandra on 13th November, 2018. The proceedings are

filed by the applicant-wife in Kalyan Court sometime on or after 15th November, 2018.

11. I find that till the time the applicant-wife resided at the matrimonial home viz. till 29/9/2018, the child was taking education at a school which was close to the matrimonial home.

12. It is common knowledge that the distance between Kalyan where the wife presently resides and Family Court at Bandra is not much. Moreover, there are adequate and convenient facilities of transport available. I also find that it is only after the respondent-husband filed the proceedings for custody that proceedings are filed by the wife. In any case, it is common knowledge that large number of citizens travel daily from Kalyan to the suburbs in Mumbai.

13. Be that as it may, I do not think this is a fit case where it could said that any inconvenience to the applicant-wife would be caused for attending proceedings at Family Court, Bandra. In the facts of the present case, therefore, I am not

inclined to allow this application.

14. The application is rejected and disposed of accordingly.

(M.S.KARNIK, J.)