IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION (ST) NO. 11280 OF 2018

Smt. Kirti Surendra Gile .....Applicant
V/s.
Shri. Surendra Jagannath Gile ....Respondent

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Mr. Pravin Gole h/f. Mr. Shrishailya S. Deshmukh, Advocate for the applicant.

Mr. Anand S. Kulkarni, Advocate for the respondent.

CORAM : SANDEEP K. SHINDE, J.

Friday, 18th January, 2019.

P.C. :

1. It is an application under Section 24 of the Code of Civil Procedure, 1908 filed by the wife seeking transfer of proceedings in Petition No.A-135 of 2017 pending before the Family Court, Thane to the Family Court, Pune. The petition No. A-135/2007, pending before the Family Court, is filed by the respondent-husband.

2. Heard learned Counsel for the parties.

3. Perused the application, reply filed by the respondent and rejoinder filed by the applicant to the reply.

4. The parties were referred to the Mediator. The mediation report shows that the mediation has failed.

5. The parties got married in December, 2002. Out of the said wedlock, two daughters were born. One is 15 years old and another is 9 years old. The applicant is a Graduate and presently residing at parent's house at Pune. The respondent is serving with the MTNL and residing at Thane. Both the daughters are with the applicant. The daughters are taking education in Potdar International School.

6. In the year 2014, the applicant had undergone kidney transplantation and the kidney was donated by the husband. It is pointed out that the entire expenditure for the kidney transplantation was incurred by the husband. Since thereafter, the parties are living separately. The husband thus filed the petition under Section 9 for the restitution of conjugal rights in March, 2017 in the Family

Court at Thane.

7. The applicant seeks transfer proceedings in petition for restitution of conjugal rights from Thane to Pune Family Court on the ground that her two daughters are minor and there is nobody to take their care in her absence. Besides, it is also contended that the applicant has also undergone kidney transplantation.

8. The learned Counsel appearing for the respondent has pointed out kidney was donated by the husband and entire expenditure for the transplantation was incurred by him. He has placed on record, the bank statements which show that he had paid the amount in the Account of Ruby Hall Clinic at Pune. He has further pointed out that since the applicant started residing separately with the daughters, the respondent has regularly transferred every month, amount in the range of Rs.5,000/- and odd in the Account of the respondent as could be seen from the bank statements at page-102 to 114. This fact is also not disputed by the applicant. It is further pointed out, that the school fees of the daughter was paid by the husband as

evident from the receipt at page-115. It is also pointed out that the respondent-husband is depositing a fixed amount in the Account of Bank of India as and by way of provision for the future expenses of his daughters. The statement of Accounts of Bank of India is at pages-116 and 117. It is further pointed out that he respondent had sent the money-order to his wife but she refused to accept the same.

9. The respondent has opposed the transfer of proceedings from Thane to Pune on the ground that after the kidney transplantation, he is suffering health issues and in support thereof, he has placed on record, the Pathological reports for the years 2016, 2017 and 2018 at pages-85 to 87. The report shows that his creatinine is not within the normal range and therefore Doctor has advised him not to travel.

10. I have perused the application, affidavit-in-reply filed by the respondent and the documents placed on record. The only ground on which the transfer of proceedings is sought is that, there is nobody to look after the minor daughters of the applicant. As against this, it is to be stated

that the respondent has taken all possible efforts to take care of his wife and daughters. The Pathological reports of the respondent are not disputed. It may also be stated that the respondent has filed the petition under Section 9 and thus attempt is made to save the marriage. It is to be further stated that the applicant is residing at Pune with her parents. The age of the father of the applicant is 56 years. Thus, taking into consideration overall facts of the case, and since the father of the applicant is able to take care of the minor daughters when applicant would attend the Family Court at Pune, I am not inclined to grant this application. Moreover, the medical reports of the respondent are not disputed. The distance between Pune and Thane is hardly 150 kms. It may be stated, respondent is serving with MTNL, whereas, applicant is homemaker. Moreover, respondent has been advised to avoid traveling on account of health issues. Thus, taking into consideration the overall facts of the case, I am not inclined to grant this application.

. However, to cause least inconvenience to the

applicant, the learned Family Court before whom the proceedings are filed, shall ensure that the subject petition i.e. Petition No.A-135 of 2017, is heard as expeditiously as possible. The learned Judge shall not insist the presence of the applicant-wife unless it is necessary. The learned Judge shall also ensure that unnecessary adjournments are not granted in the said proceedings. In my view, the aforesaid directions will cause least inconvenience to the applicant. With these observations and the reasons stated herein, the application is dismissed.

(SANDEEP K. SHINDE, J)