

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

MISCELLANEOUS CIVIL APPLICATION (ST.) NO.11030 OF 2019

Mrs. Caroline Cedric DCosta

And Others

... Applicants

Versus

Mr. Cedric Domingos DCosta

... Respondent

.....

Mr. Jitendra Mishra a/w Abhijit Singh i/b Ram. Ba. Laxmipalli for
the Applicants.

Mr. Govind B. Pawar for the Respondent.

.....

CORAM : K. K. TATED, J.

DATE : 29 JULY 2019

P. C. :

. Heard learned Counsel for the parties.

2 By this application, Applicant No.1-wife under Section 24 of the Code of Civil Procedure, 1908 ("Code"), seeking transfer of Regular Civil Suit No.34 of 2018 B, filed by the Respondent-husband before the Court of Civil Judge, Senior Division, at Vasco Da Gama, Goa for restitution of conjugal rights and custody of child under Section 32 of the Divorce Act, 1869 ("DV Act") to the Family Court at Bandra.

3 Mr. Jitendra Mishra, learned Counsel appearing for the Applicants submits that in the present proceedings, Applicant No.1-wife, initially, filed Petition No.2265 of 2017 before the Family Court, Bandra at Mumbai for dissolution of marriage under

Section 10 (X) of The Divorce Act, 1869 in August 2017. He submits that the Respondent-husband filed his written statement in that petition on 17 April 2018. He further submits that even the Respondent-husband has filed application under Section 20, Order VI Rule 14A of the Code for stay of hearing of the petition and/or rejection of the same on 17 April 2018 with the following prayers :

- (a) That this Hon'ble Court may be pleased to order and direct the Petitioner to change³ the registered address of the Respondent in the cause title of the Petition and thereafter, the Petition may be transferred to competent Goa Court;
- (b) That pending the hearing and final disposal of this Misc. Application the hearing of the Petitioner may be stayed ;
- (c) Pass such further and other reliefs as deem fit and proper in the interest of justice.

4 The learned Counsel for the Applicants submits that even the Respondent filed application under Order VI Rule 16, Order VII Rule 10 and Rule 11 of the Code for rejection of the Applicant's petition for divorce and / or return of the plaint on 17 April 2018. He submits that after participation in the Applicant's petition for divorce, the Respondent filed Regular Civil Suit No.34 of 2018 B in the Court of Civil Judge, Senior Division, at Vasco Da Gama, Goa on 7 May 2018. He submits that in the said suit, the Respondent incorrectly stated that Court of Civil judge, Senior Division, at Vasco Da Gama, Goa has jurisdiction to entertain and

decide the suit filed by the Applicants. He submits that, the subsequent Regular Civil Suit No.34 of 2018 B filed by the Respondent is required to be transferred, for hearing and final disposal before the Family Court at Bandra, Mumbai on merits. He submits that this Court has jurisdiction to decide the present application for transferring the suit filed by the Respondent in Goa State. In support of his submission, he relies on the judgment of this Court dated 29 March 2019 **in the case of Mrs. Sweta Milind Hoble Vs. Milind Anil Hoble**¹ with **Mr. Milind Anil Hoble Vs. Mrs. Sweta Milind Hoble**² (Coram : S.S. Shinde, J.).

5 Learned Counsel for the Applicants submits that, Applicant No.1 has minor child of five years old, therefore, it is difficult for her to travel from Mumbai to Goa for attending Regular Civil Suit No.34 of 2018 B filed by the Respondent. He submits that, on the basis of the reply filed by the Respondent, it is clear that the Respondent's address in AADHAR card is of Kurla, Mumbai. He further submits that even the Respondent's address in ration card, driving licence, passport as well as birth certificate of the child is of Kurla, Mumbai. He submits that the Court at Mumbai had only jurisdiction to entertain and decide the matter between both parties. He further submits that Applicant No.1 resided at Kurla, Mumbai address, after marriage. In support of his contention, he relies on paragraphs, 1, 3 and 6 of the Respondent's Regular Civil Suit No.34 of 2018 B, which reads thus :

1 Misc. Civil Appln. No.265 of 2018

2 Misc. Civil Appln (St.) No.32454 of 2018

"1 The Plaintiff states that the Plaintiff and the Defendant are husband and wife. Their marriage was solemnized on 19 January 2013 in the office of the Registrar Mumbai, Maharashtra. After Civil Registration there was function in the Church of Our Lady of Assumption Church, Velsao.

2 ...

3 The Plaintiff states that out of the said wedlock, a baby boy was born to the defendant on 29 October 2014 at Mumbai wherein the Plaintiff and the defendant were temporarily residing at Room No.504, building No.77/B wing, Nehru Nagar, Kurla (East) Mumbai along with parents of plaintiff.

4 ...

5 ...

6 The Plaintiff states that after 15 days staying at the Matrimonial home i.e. 101/1, Asu Villa Belladi, Velsao, Cansaulim, Mormugao, Goa the plaintiff, defendant and their son went to Mumbai wherein the defendant and their son resided with the defendant mother at the address mentioned above the plaintiff proceeded to resume his work in Dubai."

On the basis of this submission, learned Counsel for the Applicants submits that Regular Civil Suit No.34 of 2018 B filed by the Respondent at Vasco Da Gama Goa is required to be transferred to Mumbai for hearing and final disposal on merits. He further submits that even in any case the Respondent presently in service at Bur Dubai, U.A.E. He submits that travel from Mumbai to Goa, is twelve hours journey along with her

minor child is very difficult for Applicant No.1. Hence, the application filed by the Applicants is required to be allowed.

6 On the other hand, Mr. Govind Pawar, learned Counsel appearing for the Respondent vehemently opposed the present application. He submits that this Court has no jurisdiction to try and entertain the present application at all. He submits that Goa is a separate State and the Respondent-husband filed his Regular Civil Suit in Goa State, therefore, the Applicant had to file application in Apex Court only. Therefore, on this count, the present application is required to be dismissed with costs.

7 Learned Counsel for the Respondent submits that the Applicant failed and neglected to disclose true facts in the present case. He submits that the Applicants and the Respondent were staying in Goa State only. In support of his contention, he relies on a copy of ration card and other documents annexed to his additional affidavit dated 26 July 2019. He submits that, neither Respondent nor the family members were staying at Kurla, Mumbai address. He submits that Room No.504, building No.77/B wing, Nehru Nagar, Kurla (East) Mumbai has taken by the Respondent's father on leave and license basis. He further submits that even the Applicant is residing in Goa State only. Therefore, the application filed by the Applicant under Section 24 of the Code for transferring the Respondent's suit from Goa to Mumbai is required to be dismissed.

8 Learned Counsel for the Respondent further submits that

the Respondent has already preferred two applications before the Family Court at Bandra, Mumbai for transferring the Applicant's petition and dismissing the same on the ground that Family Court at Bandra, Mumbai have no jurisdiction to entertain the same. He submits that both these applications are pending for hearing and final disposal on merits.

9 Mr. Govind Pawar, learned Court for the Respondent in support of his contention submits that this Court has no jurisdiction to entertain the present application, relies on the judgment of Apex Court in the case of **Rajasthan High Court, Advocates Association Vs. Union of India**³ and judgment of Madras High Court in the case of **K. Kavitha Vs. Subramanian**⁴. He submits that in both these matters the Supreme Court as well as Madras High Court have held that, the application is required to be filed before the same bench. Therefore, the present application is not maintainable. This is to be noted that Madras High Court in the case of **R. Sunitha Vs. A. Mukundan**⁵, held that Principal Bench of Madras High Court at Chennai have jurisdiction. Hence, the application made by the Applicant is not maintainable at the stage.

10 I heard learned Counsel for the parties.

11 It is to be noted that in the present proceedings, the Applicant filed petition for divorce being A/2256/2017 in the month of August 2017, thereafter the Respondent filed his

3 AIR 2001 Supreme Court 416

4 AIR 2007 (NOC) 1841

5 AIR 2007 (NOC) 1840 (Mad)

written statement on 17 April 2018. He also filed two applications for rejection and transferring of petition filed by wife on 17 April 2018 and thereafter he filed Regular Civil Suit No.34 of 2018 in the Court of Civil Judge, Senior Division, at Vasco Da Gama, Goa for restitution of conjugal rights and custody of child under Section 32 of the Divorce Act, 1869. Apart from that, the Applicant has five years old minor child. The Applicant is required to travel from Mumbai to Goa at least more than twelve hours. Therefore it is very difficult for the Applicant-wife to travel along with the child on each and every date of hearing from Mumbai to Goa. Apart from that the Apex Court in several cases held that convenience of the wife is required to be seen in such type of cases. Even our High Court after considering several judgments held that in such case, the application filed at Principal Bench of Bombay High Court at Bombay is maintainable, **in the case of Mrs. Sweta Milind Hoble Vs. Milind Anil Hoble⁶ with Mr. Milind Anil Hoble Vs. Mrs. Sweta Milind Hoble, *supra*.** In view of that fact, I am satisfied that the Applicant has made out a case for allowing this application. Hence, the following order.

: O R D E R :

- i) Regular Civil Suit No.34 of 2018 B, filed by the Respondent-husband before the Court of Civil Judge, Senior Division, at Vasco Da Gama, Goa for restitution of conjugal rights and custody of child under Section 32 of the Divorce Act, 1869 is transferred, to the Family Court at Bandra, for hearing and final disposal,

6 Misc. Civil Appln. No.265 of 2018

on merit along with the petition, being A/2265/2017 filed by the Applicant-wife for dissolution of marriage under Section 10 (X) of DV Act ;

iii) The application is allowed accordingly ;

iv) No order as to costs.

(K. K. TATED, J.)