

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Misc. Civil Application No.151/2019

Jyoti Rixon D'souza Applicant

Vs.

Rixon Pascol D'souza Respondent

Mr. Sujay H. Gangal for the Applicant

Mr. R. R. Salvi I/b. Suvarna B. Telgote for the Respondent

CORAM : K.K.TATED, J.
DATED : JULY 25, 2019

P.C.

1 Heard. This Application is filed by wife under section 24 of the Code of Civil Procedure, 1908 for transfer of M.P.No.71/2018 filed by the Respondent husband u/s.10(1)(i)(ix) and 43 of Divorce Act, 1869 before the Additional District Judge, Vasai to the District Court, Osmanabad.

2 The learned counsel for the Applicant submits that at present the Applicant is residing at Osmanabad. Therefore, it is very difficult for her to travel from Osmanabad to Vasai on every date. He submits that the Applicant has filed a criminal case u/s.12, 17, 18, 19, 20, 21 and 22 of the Protection of Women from Domestic Violence Act, 2005 before the Osmanabad Court in the month of October 2018. He submits that the said matter is pending before the Osmanabad Court where the Respondent is attending

regularly. He submits that thereafter the Respondent filed divorce petition on 04.12.2018 before the additional District Judge Vasai. He submits that the distance between Osmanabad and Vasai is more than 450 km. He submits that the Applicant being lady, it is very difficult for her to travel from Osmanabad to Vasai on every date. He submits that even at present the Applicant is unemployed. She is also facing financial difficulties. Therefore, it is not possible for her to attend the matter at Vasai on every date. He submits that earlier the Applicant used to do work of Public Works Department of the State of Maharashtra. Now she has stopped taking those works. Therefore, in the interest of justice, this Hon'ble Court be pleased to transfer the divorce petition of the Respondent from Vasai to the Osmanabad Court.

3 On the other hand, the learned counsel for the Respondent has vehemently opposed the present application. He has filed Affidavit in Reply dated 12.07.2019. The learned counsel for the Respondent submits that they have filed divorce petition before the Vasai Court on the ground of adultery. He relies on paragraph 37 of the said petition. He submits that bare reading of paragraph 37 shows that entire evidence is available at Vasai court. If the matter is transferred from Vasai to Osmanabad Court it will be very difficult for the Respondent husband to prove his case of adultery. Therefore, there is no question of transferring the matter from Vasai to Osmanabad.

4 The learned counsel for the Respondent submits that his client is ready and willing to pay the expenses to the Respondent to attend the matter at Vasai. He submits that as the Applicant was taking contracts of PWD, there is no question of any financial crisis of her. To that effect the learned counsel for the Respondent has relied on para 11 of the Affidavit in Reply which reads thus:

“11. With reference to point raised by the Applicant in paragraph No.7(c) hereinabove I say that the say of the Applicant that she cannot travel alone or reside alone without support of anybody when she would attend the date at Vasai Court, is absolutely worthless and does not require even a moments consideration from this Hon'ble Court. I say it is pertinent to note that before Marriage and after Marriage, the Applicant used to visit on her own, to places like Beed, Osmanabad, Barsi etc. for carrying out her contractual work. Further it has come on record that after the marriage, the Applicant has visited places like Aurangabad, Pune, Lonavala etc. on her own, for number of days at her sweet-will. Thus the Applicant who is well educated and well travelled woman cannot come before this Hon'ble Court and plead her imaginary difficulty of travelling. Apart from this, the Marriage Petition - being civil proceedings the presence of the Applicant at each and every date is not necessary; and can attend the Court whenever it is convenient for her with the permission of the Court.”

5 On the basis of these facts, the learned counsel for the Respondent submits that there is no substance in the present application and same is liable to be dismissed with costs.

6 Heard. It is to be noted that in the present proceedings the Respondent has filed marriage petition No.71/2018 before the Additional District Judge, Vasai on

adultery. Para 37 of the petition shows that maximum evidence is available in Vasai area only. Apart from that the Applicant was doing PWD's contract work from time to time. There is no question of any financial crisis. Apart from that the advocate for the Respondent has made a statement before this court that they are ready and willing to pay the actual expenses for attending the matter at Vasai.

7 It is to be noted that the Apex Court in the matter of **Preeti Sharma Vs. Manjit Sharma (2005) 11 SCC 535** held that if other side is ready and willing to bear the expenses, there is no question of transferring the matter from one place to other place always at the request of the wife. Paragraph 2 of the said judgment reads thus:

"2. The grounds made out are that the Petitioner is an unemployed lady and totally dependent on her uncle and that she will be hard-pressed to defend the suit at Muzaffar Nagar. It is also claimed that there is a petition for restitution of conjugal rights and certain other proceedings pending in Delhi. In our view, no substantial ground for transfer has been made out. If the Petitioner wishes that all cases be tried at one place, she may apply for the same and we will transfer the cases pending in Delhi to Muzaffar Nagar. Merely because the Petitioner is a lady does not mean she cannot travel to Muzaffar Nagar. At the highest she can be paid expenses for travel and stay. We, therefore, direct that the Respondent shall pay to the Petitioner and a companion travel and stay expenses on every occasion that the Petitioner is required to go to Muzaffar Nagar. The Court at Muzaffar Nagar shall ensure that such payment is made to the Petitioner on every occasion. With these directions, the transfer petitions are dismissed."

8 In the matter of **Anindita Das Vs. Srijit Das (2006)**

9 SCC 197 the Apex Court held that it is not necessary always to transfer the petition from one place to another as per the convenience of the wife / lady. Paragraph 3 of the said judgment reads thus

“3. Even otherwise, it must be seen that at one stage this Court was showing leniency to ladies. But since then it has been found that a large number of transfer petitions are filed by women taking advantage of the leniency shown by this Court. On an average at least 10 to 15 transfer petitions are on board of each admission day. It is, therefore, clear that leniency of this Court is being misused by the women.”

9 Considering these facts and the law laid down by the apex court, I do not find any substance in the application. Hence, following order is passed:

- a. The Misc. Civil Application stands rejected.
- b. Liberty granted to the Applicant to make appropriate application seeking actual expenses incurred by her to attend the matter at Vasai Court, which will be decided on merits.
- c. No order as to costs.

(K.K.TATED, J.)