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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
MISC.CIVIL APPLICATION NO.177 OF 2019

Queeny Maria D'Souza	...Applicant
vs.	
Sameer Suresh Gemawat	...Respondent

Mr.S.R.Moray for the Applicant
Mr.P.J.Thorat for the respondent

CORAM : K.K.TATED, J.
DATE : SEPTEMBER 5, 2019

P.C.:

1 Heard learned counsel for the parties.

2 By this application under section 24 of the Code of Civil Procedure, 1908 the applicant wife is seeking transfer of Petition No.B-24 of 2019 filed by the respondent husband before the Family Court at Pune for declaration, possession, injunction and in the alternative for partition of property under sections 5 and 38 of the Specific Relief Act, 1963, under section 7 of the Family Court Act to the Family Court at Bandra, Mumbai for hearing and final disposal on its own merits.

3 The learned counsel for the applicant states that the respondent has filed divorce petition in Pune and the same was decided exparte. Hence, the applicant filed First Appeal No.1553 of 2011 which

is pending before this Court for hearing.

4 The learned counsel for the applicant states that, the applicant is not keeping well. He states that the applicant has to look after her two minor children. Both the children are studying in X and XII standards respective which are crucial years of their career. Therefore, she requires transfer of the petition. He further submits that the applicant also filed M.J.Petition No.D-32 of 2019 before the Family Court at Bandra, Mumbai for guardianship and custody under section 7(b),(8a) and u/s 10(1) of the Guardians and Wards Act,1890 r/w Section 3(1)(a) r/w (ii) and Section 7 (1) (g) of the Family Court Act,1984 on 15th April 2019. He submits that the respondent was duly served in said pending petition. He submits that the respondent is appearing in the petition pending at Family Court at Bandra, Mumbai. He submits that the applicant has to travel from Bombay to Pune for attending the petition filed by the respondent in Family Court at Pune. He submits that in the interest of justice, this Court may be pleased to transfer the petition filed by the respondent to Family Court at Mumbai for hearing and final disposal on its own merits. He further submits that if the matter is transferred to Mumbai in that case both the petitions can be decided together. Hence, this Court be pleased to allow the present application.

5 On the other hand, the learned counsel for the

respondent vehemently opposed the present application. He submits that the respondent cannot walk due to knee surgery. To that effect he placed on record a certificate issued by the Hospital Prehab dated 29th June 2019 which is at Exhibit-A. He also placed on record a certificate issued by Ruby Hall Clinic which is at Exhibit-B in his reply. He submits that it is difficult for the respondent to travel from Pune to Mumbai if the matter is transferred to Mumbai for final hearing. On these grounds, the learned counsel for the respondent submits that there is no substance in the present application and the same is required to be dismissed with costs.

6 I have heard both the parties. It is to be noted that in the present proceedings, the applicant is not keeping well. Apart from that she has to take care of her both the children who are taking education in X and XII standards which are the crucial years for both the children. Apart from that, the petition filed by the wife for guardianship is pending before the Family Court at Bandra, Mumbai. Dispute involved in the petition filed by the respondent at Pune is in respect of flat No.403 and 404. Fairfield Co-operative Housing Society Ltd., Malad (W), Mumbai.

7 Considering these facts, I am of the opinion that, matter filed by the respondent is transferred to Mumbai that can be decided along with the

petition filed by the wife.

8 In view of this fact, following order is passed:

(a) Petition No.A-24 of 2019 filed by the respondent husband before the Family Court at Pune is transferred to the Family Court at Bandra, Mumbai for final hearing and disposal on its own merits with M.J.Petition No.32 of 2019 filed by the applicant wife for guardianship and custody of the children.

(b) Misc.Civil Application is allowed accordingly.

(c) No order as to costs.

(K.K.TATED,J.)