

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
MISC. CIVIL APPLICATION NO. 266 OF 2018

Manisha Jitendra Mhatre, an adult,
Indian Inhabitant of Mumbai,
Occupation : Business,
R/at : B/1701, Laxman Tower
above D-Mart, Kandarpada, New
Link Road, Dahisar (West),
Mumbai 400 068.

... Applicant

Vs

Jitendra Vasant Mhatre, also an
adult, Indian Inhabitant of Mumbai,
Occupation : Business,
R/at : B/1701, Laxman Tower
above D-Mart, Kandarpada, New
Link Road, Dahisar (West),
Mumbai 400 068.

... Respondent

Advocate Smita Vora for the Applicant.

Advocate Prakash Hartalkar a/w. Advocate Tejas P. Hartalkar
for Respondent.

CORAM : SANDEEP K. SHINDE J.

Reserved Order on : 22nd April, 2019

Pronounced Order on : 3rd May, 2019

ORDER :

1. It is an application under Section 24 of the Code of Civil Procedure, 1908 whereby the applicant is seeking, transfer of Short Cause Suit No. 1550 of 2018 from the City Civil Court at Dindoshi to Family Court at Bandra and directions to try and dispose of the same along with Petition No. A-1486 of 2018 which is pending before the same Court.

2. Husband, of the applicant filed petition A-1486 of 2018 under Section 27 (1) (d) of the Special Marriage Act, 1954 for Divorce, wherein, the applicant has filed a counter-claim on 17.10.2018; particulars of which are as under;

a) In the year 1999, applicant and the respondent together started a restaurant in the name and style, M/s. Banjara Dhaba, at Holy Cross Road, Borivali (West). The said restaurant was efficiently managed by her till July 2017, but since thereafter respondent restrained her from entering the premises of Restaurant. The applicant would claim that, when the idea was conceived to start the restaurant, right from identifying the location to its interior designing was done by her. She would contend, right from bringing kitchen

essentials, planning menu, appointment and management of staff along with other professional activities i.e. sitting at counter reception, taking parcel orders over the phone, home delivery was managed and looked after by her. In short, she would contend that she was integral part of the management of the Banjara Dhaba, and invested a substantial amount and has advanced Rs. 2,50,000/- (Rs. Two Lacs Fifty Thousand) in March 2014 to entity Banjara Dhaba, as a working capital. The applicant would submit in her counter-claim that the premises were taken on rental basis for running the Dhaba, initially for eleven months however the respondent may claim monthly tenancy in respect of the area occupied by Banjara Dhaba.

In the facts aforesated, she raised the counter-claim and sought the following reliefs:-

- a) it may be declared that the applicant was in-charge of administration and management of the, Banjara Dhaba;
- b) it may be declared that the applicant is entitled to 50% tenancy right in the land, if claimed by the petitioner from its owners;
- c) that she may be declared having 50% right in the structure of said Banjara Dhaba;
- d) that she is entitled to an amount of Rs. 50,000/- per

month since June, 1999 till December, 2006 aggregating to Rs. 1,71,50,000/- (Rs. One Crore Seventy One Lacs Fifty Thousand), towards her share in profit;

e) that she is entitled to 50% share in the goodwill of said restaurant;

f) that respondent/ husband be directed to repay the loan of Rs. 2,50,000/- with interest aggregating in sum of Rs.5,23,205/- (Rs. Five Lacs Twenty Three Thousand Two Hundred Five);

g) that respondent be injuncted from dispossessing her, from shared household in which she is living, with her son Aman;

h) that the respondent / husband be directed to transfer one of the cars out of two in her name;

i) that respondent be restrained from taking away 'child' Aman from her custody;

j) that respondent/ husband may be restrained from interfering in the business of hotel 'Roti', which she is running at Kalangut, Goa;

k) that respondent / husband may be directed to furnish full and complete accounts of Banjara Dhaba, for eight years and its inspection;

l) that respondent/ husband be directed to furnish

copy of his income tax returns for last eight years;

m) pending the counter-claim, the respondent be directed to pay Rs. 1,00,000/- towards monthly maintenance to her and Rs. 25,000/- to her son, till he attains the age of majority and for such other reliefs, more particularly set out in the counter-claim.

3) Applicant has therefore claimed share in the property of her husband.

4) In May, 2018, husband filed Civil Suit no. 1550 of 2018 and would claim exclusive rights in the business of restaurant being conducted in the rental premises situated at survey no. 128, Hiss No. 6, Borivali (West) since 2006. He denied applicant's contribution and participation in the business. It is his case that all the required licenses for conducting the business were obtained by him in his name, as owner thereof. It is his case that his wife has started hotel at Goa in the name and style M/s. Roti, in December 2017 without his knowledge. That due to her aggressive nature their temperaments seldom matched and therefore he filed a petition for divorce in April, 2018 in the Family Court, Bandra, Mumbai. It is his case that in December 2017, wife had filed a false complaint against him and Mr. Patro, the Manager of Dhaba for alleged physical violence. It is his case that she was interfering in his business with

the help of local Corporator. In plaint, he pleaded that the applicant started claiming right over Dhaba and started picking up fights with the plaintiff in front of the staff and the customers, which is humiliating and embarrassing. It is pleaded that applicant started threatening the staff of Banjara Dhaba and directed the staff to connect the CCTV installed in the Dhaba to her mobile phone so that she can keep a watch on the activities of Banjara Dhaba. It is due to her continuous interference and indulgence, he is suffering in the business. Thus, under the circumstances, he left with no alternative but to file suit no. 1550 of 2018 in the City Civil Court at Dindoshi, for the following reliefs :

“(a) It may kindly be declared that defendant has no right, title or interest of whatsoever nature in the management, operation and business affairs of Banjara Dhaba being carried out at suit property.

(b) The defendant may kindly be restrained by an order of permanent injunction from entering the suit property.

(c) The defendant may kindly be restrained by an order of permanent injunction from interfering in the business of Banjara Dhaba being carried out at suit property.

(d) Any other order as this Hon'ble Court deems just and reasonable in the interest of justice may kindly be passed.”

The suit was filed in May, 2018 and the counter-claim as detailed herein above was filed by the applicant in the petition for

divorce filed by him in the Family Court, Bandra, Mumbai.

5) The applicant is seeking transfer of Civil Suit No. 1550 of 2018 from City Civil Court at Dindoshi to the Family Court at Bandra, on the ground that in respect of the matters that may fall under explanation to Section 7 of the Family Court Act, the Family Court has exclusive jurisdiction to try the suit no. 1550 of 2018 being between the parties to marriage in respect of the property of the parties. It is urged that in the petition for dissolution of marriage, the applicant in counter-claim has sought rights in her husband's property and since the Family Court has jurisdiction to try and dispose of the same in terms of provisions of Section 7(1)(a)&(b) read with explanation clause (c) of the Family Court Act to that extent jurisdiction of Civil Court is excluded. It is argued that in Short Cause Suit No. 1550 of 2018, husband is seeking negative declaration that the applicant has no right, title or interest of whatsoever nature in the management, operation and business affairs of the restaurant; whereas in the counter-claim filed in the petition for dissolution of marriage, the applicant is claiming her rights, title and interest in the business premises, management, operation and goodwill of Banjara Dhaba. It is further argued that since the business restaurant was started jointly by applicant and respondent since 1999, till 2017, she has right to claim share in the goodwill of the business. It is therefore argued that when the suit

between the parties to marriage with respect to property of the parties or of either of them is filed, the Family Courts shall be deemed District Court in relation and respect of such suit and proceedings, in respect of property of the parties.

6) On the other hand, it is argued by the learned counsel for the respondent that restaurant M/s. Banjara Dhaba is exclusively owned by him and he alone manages the business since 1999. It is argued that even assuming but without admitting that Family Court has jurisdiction to try and entertain the dispute in terms of Section 7(1) (a) & (b) read with explanation clause (c) of the Family Courts Act, a proper recourse is to file appropriate proceedings in the civil court and to establish the civil court has no jurisdiction to admit and entertain the said suit.

7) Section 7 of the Family Courts Act deals with jurisdiction of the Family Court, that is over which matters the Family Court will exercise the jurisdiction. It is significant to note that the suit or proceedings, between the parties of marriage with respect to the properties of the parties to the marriage or either of them, are amongst the items of suit and proceedings enumerated in the explanation to Section 7. The jurisdiction conferred is not merely with reference to the property of the parties to marriage, but also with respect to the properties of either of them. It is also clear that

exercise of such jurisdiction may arise either in suit or in proceedings. Under Section 27 of Hindu Marriage Act, the jurisdiction of the District Court is confined to gifts made at about the time of marriage, which may belong jointly to both husband and wife. However, after enacting the Family Courts Act, the Family Court has jurisdiction in respect of the matters that may fall under explanation to Section 7, Clause 'a' to 'e'.

8) In the case at hand, the applicant is claiming right in the business of restaurant, which includes share in the property, goodwill, right to administer business and the profits; whereas husband is claiming exclusive ownership over the premises and the business. Thus, dispute relates to property of the parties to this application or either of them. Once it is shown that one of the parties to the marriage is owner of said property, the Family Court shall have jurisdiction to try the suit relating thereto. In the case at hand, in the suit filed in May, 2018 husband is seeking declaratory decree that his wife has no right either in business or structure where, restaurant is housed. However in respect of the very business, counter-claim is filed by the wife in the petition for dissolution of marriage filed by the husband.

9) Where there are two suits/ proceedings, which have certain common question of fact and law having substantial bearing on the

decision of each of the case, it is desirable that they should be tried on same place and by the same Judge.

10) In the case at hand, the issues arising for decision in the counter-claim and in the suit are substantially common and same set of oral and documentary evidence would be needed for determining the issues of fact and law, arising for decision in the suit and in counter-claim. Therefore to avoid the duplication of recording of evidence and possibility of inconsistent findings and conflicting decrees, the suit filed by the respondent/ husband is required to be transferred to the Family Court and to be heard along with the counter-claim filed by the applicant in the Petition No. A-1486 of 2018.

11) Even if it is accepted, for the sake of argument that the suit filed by the husband was not maintainable, but in view of the provisions of Section 24(5) of the Code of Civil Procedure, 1908, this Court is empowered to transfer the suit or proceedings from the Court, which has no jurisdiction to try it.

12) Be that, as it may; in the case at hand, both parties are residing at Mumbai. Husband has filed the petition for divorce in the Family Court at Bandra and also suit in City Civil Court at Dindoshi, Mumbai. If the suit proceedings are transferred from Civil Court, Dindoshi to the Family Court, no inconvenience would cause to the

husband. That even otherwise, since same set of oral and documentary evidence would be needed to be adduced for the purpose of determining the issues of fact and law arising for the decision in the suit and in the counter-claim, it is desirable to transfer proceedings in the suit from City Civil Court, Dindoshi to Family Court, Bandra, Mumbai.

13) Thus for the reasons stated herein above, application is allowed. Hence, the following order :-

ORDER

(i) The learned Civil Judge at Dindoshi Court shall transfer the papers and proceedings in Short Cause Suit No. 1550 of 2018 to the Family Court, Bandra, Mumbai and Family Court is requested to try the said suit along with the cross objections filed by the applicant in Petition No. A-1486 of 2018.

(ii) The parties, as well as the, learned Civil Judge, Dindoshi Court to act on authenticate copy of this order.

(iii) Both the parties are directed to appear before the learned Family Court at Bandra, Mumbai on 11.06.2019 at 11.00 a.m.

(iv) Miscellaneous Civil Application No. 266 of 2018 is allowed in the aforesaid terms. No orders as to costs.

(SANDEEP K. SHINDE, J.)

