

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION (ST) NO. 36384 OF 2018

Smt. Chandravati Chandrakant
Pilankar

....Applicant

V/s.

Shri. Laxman Vasant Aarondekar
and Ors.

....Respondents

* * * *

Mr. Mahesh V. Rawool, Advocate for the applicant.

Mr. G.H. Keluskar Advocate for the respondents.

CORAM : SANDEEP K. SHINDE, J.

18th March, 2019.

P.C. :

1. The applicant seeks transfer of proceedings in Regular Civil Suit (R.C.S.) No. 43 of 2016 from the Court of Civil Judge Junior Division, Dodamarg, District-Sindhudurg to the Court of the Learned Civil Judge Junior Division, Sawantwadi.

2. The applicant instituted R.C.S. No. 43 of 2016

against the respondents for perpetual injunction. The dispute relates to right of way. The interim protection was granted by the learned Civil Judge Junior Division, which was reversed in the Regular Civil Appeal filed by the respondents-defendants. The plaintiffs thus approached this Court against the order dated 25th October, 2017 passed in Misc. Civil Appeal No. 3 of 2017 by way of Writ Petition No. 14207 of 2017. The learned Judge of this Court vide order dated 3rd August, 2018 directed the parties to maintain status-quo and expedited the hearing of the suit with the directions to conclude the proceedings on/or before 31st October, 2018.

3. It is the applicant's case that, soon after the order passed by this Court, the respondents and other villagers assaulted her and her husband. It is her case that, the assault was brutal which resulted into amputation of the left leg of her husband. Photograph is placed on record at page-57 and supported by a Certificate issued by the Directorate of Health Services, Goa. It is the applicant's case that even the police machinery did not help him and in his absence

the FIR was registered against the villagers excluding the respondents. In this fact and situation, he has addressed complaint to the Superintendent of Police on 29th November, 2018 and placed on record the facts which had transpired. The copy of the complaint is at page-64.

4. The applicant therefore apprehends danger to her life and to the lives of the witnesses which is evident from the incident dated 25th August, 2018. It is her case that, it is not possible for her and her witnesses to attend the Court at Dodamarg and therefore there would be a failure of justice and there would not be a fair trial. In these circumstances, he would contend that the proceedings in the subject suit may be transferred to the Court of Civil Judge Junior Division, Sawantwadi where daughters of applicant are residing and she will be able to attend the proceedings safely.

5. The learned Counsel for the respondent would submit that, the apprehension is unfounded, in as much as, there is no FIR registered against the respondents. He would contend that the respondents are not concerned with

the alleged incident dated 25th August, 2018. He would further submit that this Court has expedited the suit proceedings and therefore the application may be rejected.

6. I have perused the application and annexures appended thereto and the reply filed by the respondents.

7. The distance between Dodamarg and Sawantwadi is about 35 kms. That good means of transport and conveyance is available to commute from Dodamarg to Sawantwadi. Though FIR is not registered against the respondents, the complaint filed by the applicant to the Superintendent of Police, Sindhudurg is sufficient to indicate that, she and her husband had suffered attack when they were to attend the proceedings at Dodamarg. Attack has caused amputation of right leg of applicant's husband. It is thus sufficient to hold that, applicant's apprehension is well founded. More so, applicant's daughters are living at Sawantwadi where she may stay, during the trial. In the given set of facts, a case is made out for exercising the jurisdiction under Section 24 of the Code of Civil Procedure to transfer the proceedings in Regular

Civil Suit No. 43 of 2016 from the Court of Civil Judge Junior Division, Dodamarg to the Court at Sawantwadi and hence the following order :

(i) The learned Civil Judge Junior Division, at Dodamarg is directed to transfer the papers and proceedings in Regular Civil Suit No. 43 of 2016 to the Learned Civil Judge Junior Division, Sawantwadi.

(ii) The parties, as well as the, learned Civil Judge Junior Division, Dodamarg to act on authenticated copy of this order.

(iii) Both the parties are directed to appear before the learned Civil Judge, Junior Division, Sawantwadi on 2nd April, 2019 at 11.00 a.m.

(iv) The Misc. Civil application is allowed in the aforesaid terms. No orders as to costs.

(SANDEEP K. SHINDE, J)