

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Misc. Civil Application [Transfer] No. 799 of 2013
[Mrs. Dipti Prithaviraj Chauhan Vs. Shri Prithaviraj Chandrakant Chauhan]

AND
Misc. Civil Application No. 517 of 2018
[Prithviraj Chandrakant Chavan Vs. Mrs. Dipti Prithviraj Chavan]

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's orders

Misc. Civil Application No. 799 of 2013 :

Mr. K. B. Zinjarde, Adv., for the Applicant.
Mr. Nitin Bhishikar, Adv., for respondent.

Misc. Civil Application No. 517 of 2018 :

Mr N. R. Bhishikar, Adv., for the Applicant.
Mr. K. B. Zinjarde, Adv., for the respondent.

CORAM : M. G. GIRATKAR, J.

DATE : 18th September, 2019

01. Misc. Civil Application No. 799 of 2013 is filed by the wife for a transfer of proceedings of Hindu Marriage Petition instituted by her husband in the Court at Kolhapur, for divorce, while the husband filed Misc. Civil Application No. 517 of 2018 initially before the Principal Seat at Bombay, for a transfer of the proceedings pending before the Family Court at Nagpur to Kolhapur. Husband's Misc. Civil Application No. 517 of 2018 is

transferred to this Court from Bombay.

02. Heard learned Adv. Shri K. B. Zinjarde for the Applicant-wife. He has submitted that the wife is working as an Executive Engineer in the Maharashtra Housing & Area Development Authority [“MHADA”] at Nagpur, and her parents are suffering from cancer and other ailments. She has a small child and, therefore, unable to go to Kolhapur. She has, therefore, prayed to transfer the proceedings of Hindu Marriage Petition No. 345 of 2013 pending before the Family Court at Kolhapur. In support of his submissions, he has relied upon the decision of the Hon’ble Supreme Court of India in the case of **Sumita Singh Vs. Kumar Sanjay & another** [2002 AIR (SC) 396].

03. Heard learned Adv. Shri N. R. Bhishikar for the Applicant-husband in Misc. Civil Application No. 517 of 2018. He has pointed out Medical Certificates issued by the doctors. The learned Adv. has submitted that the husband is suffering from heart ailment. He met with an accident and he was under the medical treatment of a doctor. As per the medical advice, he is unable to travel and, therefore, the husband requests to transfer the proceedings pending at Nagpur to the Family Court at Kolhapur. In support of his submissions, the learned counsel Shri Bhishikar has relied upon the following decisions :-

[a] Kalpna Deviprakash Thakkar (Smt) Vs.

Dr. Deviprakash Thakar [(1996) 11 SCC 96],

[b] Kamudi Aurora Vs. Surinder Pal Singh Aurora [(2004) 13 SCC 634],

[d] Gargi Konar Vs. Jagjeet Singh [(2005) 11 SCC 446], and

[b] Anindita Das Vs. Srijit Das [(2006) 9 SCC 197].

04. There is no dispute that the wife has instituted proceedings under Section 125 of Criminal Procedure Code before the Family Court at Nagpur. There is also no dispute that husband has appeared in those proceedings. Both the husband and wife are claiming that they are unable to go to Kolhapur and Nagpur and vice versa. The Medical Certificates pointed out by learned counsel Shri Bhishikar show that the husband met with an accident and, therefore, he was under the treatment of a Doctor.

05. The Certificate of Dr. Sachin Patil shows that the husband was advised not to travel etc., because of the injury sustained by him. Page No. 41 of the compilation of Misc. Civil Application No. 799 of 2013 pointed by the learned counsel shows that there is always a possibility of future problem . The percentage of disability is shown to be eighty per cent. Column [v] on page no. 41 of the

said compilation shows that the condition of the patient has improved. In the opinion clause of the Certificate dated 19th February, 2014, it is mentioned as under :-

“He is not on medication right now but he should continue regular annual visit to check for hypertension and the functioning of the heart, if it’s working regular or needs any medial attention/surgery.”

The Certificate dated 14th September, 2017 shows that he was advised constant medical check-up, treatment and continued medication throughout patient’s life, and should have a convenient access to proper medical facility and hospitals in patient’s vicinity at all times.

06. The last Certificate is of the year 2017. The present health condition of the husband is not known. The husband could have filed a Medical Certificate about his present health condition.

07. It appears that the husband and wife, both, are claiming for a transfer of the proceedings from Kolhapur to Nagpur and Nagpur to Kolhapur. There is no dispute that the wife is working as an Executive Engineer in MHADA and her parents are old and suffering. There is no dispute that she is having a small child.

08. There is no dispute that the husband is appearing in another proceedings under Section 125, Criminal Procedure Code, which are pending before the Family Court at Nagpur. The learned counsel Shri Bhishikar has submitted that the husband is appearing through his

counsel. The proceedings for divorce are also civil proceedings. They are not the criminal proceedings, in which a warrant for absence of husband cannot be issued by the Family Court. He can appear through Advocate. The cases relied upon by the side of husband are on a different footing. In the case of *Kalpana Thakar* [supra], it is observed that there are relatives of the wife at Mumbai. In para 3 of the said judgment, it is observed that “the petitioner-wife has some near relations in Mumbai. The petitioner, when asked about this fact, did not really deny the same. She, however, stated that they are not very close relatives and accommodation with them is insufficient. As while coming for the trial, she would be required to stay for a day or two only at Mumbai, this is not a material objection.” In the cited decision, the wife was not working or doing any service. Therefore, her contention was not accepted.

09. In the case of *Gargi Konar* [supra], it is observed by the Hon’ble Apex Court that it was the contention of the wife that she was a helpless woman dependent upon her father and her financial capacity is not such as to contest the proceedings at Bhatinda. Her contention was not accepted. In the present case, the wife is working as an Executive Engineer in MHADA and, therefore, it is not possible for her to attend the Court proceedings on each and every date at Kolhapur. Therefore, the cited decision is not applicable to the case in hand.

10. In the case of *Kamudi Aurora* [supra], it was observed that trial Judge may also consider the question of examining the petitioner on commission having regard to the condition of her health. In the present case also if the husband is unable to come to Nagpur due to his health condition, he may pray to the Court for recording his evidence by appointing a Court Commissioner. Hence, the cited decision is not applicable to the present case.

11. In the case of *Anindita Das* [supra], it is observed by the Apex Court that leniency shown to ladies by the Court in transfer matters has been misused and taken advantage of by women. The transfer petition was filed by the wife on the ground of her difficulty to attend the Court at Delhi because of having a child of six years, having no source of income and not keeping good health. In the present case, the wife is seeking transfer on the ground that she is in service, working as an Executive Engineer in MHADA and, therefore, unable to attend the Court at Kolhapur. Hence, the cited decision is not applicable.

12. Learned counsel Shri Bhishikar has submitted that the wife has filed a civil suit for partition at Kolhapur and she is attending those proceedings there. Nothing is placed on record to show that the wife is attending the said civil proceedings for partition on each and every date.

13. The learned counsel Shri Zinjarde has relied upon the decision of Hon'ble Supreme Court in the case of *Sumita Singh* [supra], in which the wife sought a transfer of the matrimonial proceedings filed by the husband in Bihar, to Delhi, as she is living and working in Delhi and she would be unable to travel a distance of about 1100 kms from Delhi to Ara to defend the matrimonial proceedings. In this background of said case, the petition was allowed. In the present case, the wife is working in MHADA. Her parents are old and suffering from ailments, such as cancer etc., she is having a small child. In such a situation, she cannot travel from Nagpur to Kolhapur on each and every date. Moreover, the husband has already appeared in another proceedings before the Family Court at Nagpur. In the same way, he can appear in the divorce proceedings [transferred from Kolhapur to Nagpur]. He can appear through his counsel, and, if necessary, he can seek permission from the Court to examine himself on commission. In that view of the matter, the application filed by the husband i.e. Misc. Civil Application No. 517 of 2018 is rejected. The application filed by the wife, i.e. Misc. Civil Application No. 799 of 2013, is allowed. Hindu Marriage Petition No. 345 of 2013 pending before the Family Court at Kolhapur is transferred to Family Court, Nagpur.

14. The Family Court, Nagpur, is directed to give the dates as per the convenience of the husband. As far as

possible, the dates of these divorce proceedings be given on the dates on which the proceedings under Section 125, Criminal Procedure Code, are kept and proceedings for divorce be decided simultaneously, so that there should not be any inconvenience.

15. Family Court, Nagpur, is directed to expedite both the proceedings.

Judge

[hedau]