

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

MISCELLANEOUS CIVIL APPLICATION NO.91 OF 2020

Sau.Snehal w/o Nilesh Baheti .. APPLICANT

VERSUS

Nilesh s/o Gopaldasji Baheti .. RESPONDENT

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Adv. Mr.Amit A. Mukhedkar for applicant

Adv. Mr.R.F.Totala for respondent.

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CORAM : MANGESH S. PATIL, J.

DATE : 19/10/2020

ORAL ORDER :-

With consent of both the sides heard finally at the stage of admission.

2] This is an application by a wife under Section 24 of the Code of Civil Procedure seeking transfer of Hindu Marriage Petition No.1/2020 filed by the respondent-husband and pending before the learned Civil Judge, Senior Division, Ambajogai to the Court of Civil Judge, Senior Division, Parbhani.

3] The applicant avers that she was married to the respondent on 24/5/2015 and started cohabiting with him at Parli Vajjnath, Dist.Beed. Her parental house is at Sailu, Dist.Parbhani. After cohabiting for some days, she was driven out firstly in the year 2016. Somehow the cohabiting resumed but

again she was driven out in November 2019 from the in-laws place. It is thereafter, that the respondent has filed the Divorce proceeding in the Court at Ambajogai. She avers that her father is poor, does not have means of livelihood. She has therefore instituted a proceeding seeking maintenance under Section 125 of the Code of Criminal Procedure and also another proceeding for domestic violence under the provisions of Protection of Women from Domestic Violence Act 2005 (for short D.V.Act) both of which are pending in the Court at Sailu. He submits that because of her poor financial condition she would be unable to attend the divorce proceeding at Ambajogai. The respondent is resident of Parli Vajjnath. Considering the distance between Sailu and Ambajogai as against the distance between Parli Vajjnath and Parbhani, she would be put to greater inconvenience and expense if she is made to attend the divorce proceeding at Ambajogai. The respondent is a businessman having a grocery shop at Parli Vajjnath and can easily commute between Parli Vajjnath and Parbhani. She therefore prays that the divorce proceeding be transferred from Ambajogai to Parbhani.

4] The learned advocate for the applicant in tune with the averments in the application vehemently submits that the Court must lean in favour of the weak parties. The applicant being a destitute, her convenience and inconvenience must weigh with the Court rather than the possible inconvenience to the respondent-husband. The applicant being a woman residing with her parents at Sailu and will have to travel a distance of more than 150 Kms. to attend the divorce proceeding at Ambajogai. He would submit that even the respondent-husband has to commute between Parli-Vajjnath and Ambajogai which is a distance of around 20 Kms. Instead both the parties can conveniently prosecute the divorce proceedings at Parbhani

which is at a distance of about 60 Kms. from his native Parli-Vaijnath. The learned advocate would further submit that even hardship of the applicant is not going to be completely diminished since even if the divorce proceeding is transferred to Parbhani she will still have to commute between Sailu and Parbhani which is a distance of 50 Kms. Thus taking into account the physical, mental and financial condition of the applicant, as compared to that of the respondent, the divorce proceeding deserves to be transferred from Ambajogai to Parbhani.

5] The learned advocate Mr.Totala for the respondent submits that convenience of a party cannot alone be the ground for transferring a proceeding while exercising the powers under Section 24 of the C.P.C. He would submit that it is only the Court which has a jurisdiction to which a matter can be transferred invoking that power. In the matter in hand, the Court at Parbhani does not have jurisdiction to try the divorce proceeding between the parties who have never stayed in Parbhani or at any place within the territorial limits of the jurisdiction of the Court at Parbhani. He therefore, submits that the divorce proceeding cannot be transferred to Parbhani.

6] The learned advocate Mr.Totala further submits that the conduct of the applicant disentitles her from any relief from this Court. She had not disclosed about having already married and had obtained a divorce, while solemnizing marriage with the respondent. This fact has been specifically pleaded in the divorce proceeding by him and therefore, no leniency be shown to her.

7] Lastly learned advocate Mr.Totala refers to the decision of the Single Bench of the Telangana High Court in the case of **M. Priyanka, Secunderabad**

V/s M. Narsimha Kumar, Karimnagar in proceeding Transfer Civil Miscellaneous Petition Nos.809 etc. of 2016 which was a group of matters decided by a common judgment.

8] I have carefully gone through the papers and considered rival submissions. There is no dispute about the fact that the applicant is a resident of Sailu where her parental home is whereas the respondent is resident of Parli Vaijnath. There is also not much of a dispute as far as distance between the places Parbhani, Sailu, Parli-Vaijnath and Ambajogai. Considering the fact that the applicant is a destitute this Court atleast while exercising powers under Section 24 of the C.P.C. must lean in her favour particularly when the respondent is a businessman. Though an attempt has been made on his behalf in the form of affidavit of one of his relatives mentioning that he does not own the business but merely works in the shop of his father, the copy of the divorce petition filed by him in the title mentions his occupation as a businessman. Therefore, the submission of his learned advocate and his attempt to show otherwise is liable to be discarded.

9] The law as regards transfer of proceeding in exercise of powers under Section 24 of the C.P.C. has been duly collated by the learned Judge of the Telangana High Court in the case of M.Priyanka (supra) by referring to catena of decisions of the Supreme Court and the High Courts. By summarizing the law, an attempt has been made to cull out the facts and circumstances which should weigh with a Court while considering the request for transfer. It has been specifically made clear that the guidelines are not exhaustive but are only illustrative and each case will have to be decided on the facts and circumstances peculiar to it. It has also been made clear that these guidelines

are in addition to the guidelines laid down by the Supreme Court in the case of **Kulwinder Kaur @ Kulwinder Gurcharan Singh Versus Kandi Friends Educational Trust and others; (2008) Vol-III S.C.C. 659.**

10] Bearing in mind these principles, if one considers the fact situation of the matter in hand, it is apparent that the inconvenience that is likely to be caused to the petitioner of attending the divorce proceeding in the Court at Ambajogai by travelling a distance of 150 Kms. inspite of being wholly dependent upon her parents, would certainly outweigh the inconvenience that is likely to be faced by the respondent if it is transferred to the Court at Parbhani. As can be seen, even now he has to travel the distance of around 20 Kms. between Parli Vajinath and Ambajogai and instead will have to cover a distance of 60 Kms. between Parli-Vajinath and Parbhani. As against this, the applicant will have to travel a distance of 50 Kms. between Sailu and Parbhani instead of requiring to cover a distance of 150 Kms. from Sailu to Ambajogai. Over and above, as is observed earlier the respondent is a businessman. It is necessary to note that there does not seem to be any oblique motive in making the request of transfer. Even after transfer the applicant will have to commute between Sailu and Parbhani.

11] Now coming to the legal aspects, submission of the learned advocate Mr.Totala of the respondent that in exercise of the powers under Section 24 of the C.P.C. a proceeding cannot be transferred to a place and to a Court which does not have jurisdiction to try the dispute is not legally tenable or may have to be understood by bearing in mind a distinction between territorial jurisdiction on one hand and pecuniary and subject matterwise jurisdiction on the other. Wordings of Section 24 and particularly, the words "competent to

try or dispose of the same" contained in Clause-(a) of Sub Section 1 of Section 24, essentially refers to the pecuniary and subject matterwise jurisdiction of the transferee Court and not the territorial jurisdiction. Besides Sub Section 5 of Section 24 further makes it clear that a proceeding may be transferred to a Court which has no jurisdiction to try it. Therefore, the submission of the learned Advocate Mr.Totala that a proceeding cannot be transferred to a Court which has no jurisdiction by invoking the power under Section 24 of the C.P.C. is not legally tenable.

12] Again, a reference by the learned advocate Mr.Totala to the provisions of Section 21A of the Hindu Marriage Act, 1955 is also misplaced. The provision is clearly applicable only when the husband and wife file separate proceeding under that Act in two different Courts. In the matter in hand, the applicant has not filed any proceeding under that Act and the proceedings filed by her and pending at Sailu are under the Code of Criminal Procedure and D.V.Act and consequently Section 21A of the Hindu Marriage Act will not govern the fact situation.

13] Needless to state that though the learned advocate Mr.Totala has strenuously argued touching the facts to demonstrate as to how the applicant is not entitled to the relief because of her conduct in not disclosing the fact of she being a divorcee while solemnizing marriage with the respondent, in my considered view being a pure question of fact cannot be gone into at this stage and in this proceeding.

14] To sum up, the request being made by the applicant for transfer of divorce proceeding from Ambajogai to Parbhani Court deserves to be

accepted.

15] The Application is allowed. The Hindu Marriage Petition No.1/2020 pending on the file of learned Civil Judge, Senior Division, Ambajogai, Dist.Beed is transferred to the Court of learned Civil Judge, Senior Division, Parbhani.

16] Both the parties shall appear before the learned Civil Judge, Senior Division, Parbhani on **27/11/2020**. There shall be no need for that Court to issue any notices. He shall proceed with the case from the stage which it has reached in the Court at Ambajogai.

[MANGESH S. PATIL, J.]

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