

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

941 MISC.CIVIL APPLICATION NO.98 OF 2020

DR ANUJA SATYAJIT NIGHUTE
VERSUS
DR SATYAJIT SHANTARAM NIGHUTE

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Advocate for Applicant : Mrs. Poonam V. Bodke-patil
Advocate for Respondents : Mr. Bhide Vinod Y.

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CORAM : M.G. SEWLIKAR, J.
DATE : 27.07.2021

PC.:-

This is an application under Section 24 of the Civil Procedure Code, 1908 for transfer of divorce proceedings bearing HMP No.98/2020 pending before C.J.(S.D.), Sangamner to the Court of C.J.(S.D.), Ahmedpur.

2. Both the applicant and the respondent are medical practitioners. They tied their nuptial knot on 10th September, 2019. Their marriage is on the rocks, on account of which applicant has been staying at her maternal place at Ahmedpur, Tq. Ahmedpur, District Latur. Respondent is the resident of Sangamner, Tq. Sangamner, District Ahmednagar and he is a medical practitioner there.

3. Applicant has filed this application for transfer of HMP

No.98/2020 from C.J.(S.D.), Sangamner to the Court of C.J.(S.D.), Ahmedpur, District Latur alleging therein that parents of respondent have criminal antecedents. Two criminal trials are pending against father in law and mother in law of the applicant at Sangamner. She fears threat to her life. Therefore, she cannot travel alone and attend the proceedings of divorce pending at Sangamner. She has further stated that she is working as a Senior Resident Doctor at Swami Ramanand Teerth Government Medical College and Hospital, Ambejogai and she has to commute from Ahmedpur to Ambejogai. She has to attend to Covid-19 patients also. Her parents are senior citizens. Sangamner is around 376 kms from Ahmedpur and it will be difficult for her to travel all alone from Ahmedpur to Sangamner. It is further alleged that the respondent is working as an Assistant Professor at Pravara Medical College and Hospital, Loni, Tq. Rahata, District Ahmednagar. Due to nationwide lock-down the college is not functioning. Respondent can easily travel to Ahmedpur City to attend the Court proceedings. She, has therefore, sought transfer of HMP No.98/2020 pending before the Court of C.J.(S.D.), Sangamner to the Court of C.J.(S.D.), Ahmedpur.

4. Respondent has filed the affidavit in reply and has denied all the allegations made against him in the application. He has alleged that the applicant has filed HMP No.37/2020 and FIR under Section 498-A of the I.P.C.

is registered on 08.07.2020 at Ahmedpur. She has instituted this proceeding just to harass the respondent. These proceedings are instituted after the institution of petition for nullity of marriage under Section 12 of the Hindu Marriage Act. The proceedings initiated by the applicant are, therefore, *mala fide*. He further alleged that the applicant can travel from Ahmedpur to Sangamner. When she can commute from Ahmedpur to Ambejogai which is a distance of 60 kms one way, she can also travel from Ahmedpur to Sangamner. Application for transfer smacks of *mala fides*. Therefore, it deserves rejection.

5. Heard Shri Bhide learned counsel for the applicant and Smt. Bodke learned counsel for the respondent.

6. Shri Bhide submits that respondent has filed petition for nullity of marriage first. On getting knowledge of this petition, applicant filed FIR under Section 498-A of I.P.C. at Ahmedpur and also filed petition for restitution of conjugal rights at Ahmedpur. She has also filed proceedings under Protection of Women from Domestic Violence Act, 2005 (the 'D.V. Act'). The conduct of applicant shows that these proceedings are initiated just to harass the respondent. He submits that convenience of wife always is not the criteria for deciding the transfer application. He submits that respondent is a medical practitioner. He works in college at Loni, Tq. Rahata, District Ahmednagar. He submits that the applicant is commuting from Ahmedpur to

Ambejogai daily. It is not her case that while commuting somebody accompanies her on daily basis. He submits that when she can travel from Ahmedpur to Ambejogai, she can also travel from Ahmedpur to Sangamner which will not be on regular basis but once in two or three months. He submits that he is ready to bear travel expenses also. According to him, subsequent matrimonial proceedings are to be transferred to the Court in which first matrimonial proceedings have been instituted. He submits that application for transfer is devoid of any substance. He placed reliance on the cases of **Smt. Rekha wd/o. Late Avinash Raut Vs. Shivaji Bhimrao Sapate; 2011 (3) ALL MR 279, Shri Lotal Tryambak Khairnar V/s. Narayan Hari Shinde; 2011 (3) ALL MR 282 and Kalpana Deviprakash Thakar V/s. Deviprakash Thakar; 1996 STPL 11906 SC**, for the proposition that convenience of wife cannot be the sole criteria for transfer of proceedings to the place where wife resides.

7. He also submits that in the proceedings under the Domestic Violence Act she has been awarded maintenance @ Rs.24,000/- per month. Therefore, she is financially capable to undertake journey from Ahmedpur to Sangamner.

8. Smt. Bodke submits that applicant has old aged parents who are also ailing. She submits that parents of respondent have criminal background.

Two criminal cases are pending against them. Having regard to the criminal background of parents of respondent she fears threat to her life, if she is required to go to Sangamner from Ahmedpur all alone. She submits that two more proceedings are pending at Ahmedpur. Respondent, anyhow, will be required to attend these proceedings at Ahmedpur. If the proceedings at Sangamner are transferred to Ahmedpur, it will be convenient for the respondent also as he can attend all the three proceedings. She, therefore, prayed for allowing the application.

9. Efforts of reconciliation were made. Both the parties were referred to the Mediator. Mediator has submitted the report that the mediation failed.

10. So far as transfer of cases under Section 24 of Code of Civil Procedure are concerned, this Court (Coram: R.K. Deshpande, J.) in the case of **Smt. Rekha** cited (supra) has made the following observations:

5. Section 24 of the Code of Civil Procedure confers a discretionary power upon this Court to transfer the proceedings pending in one subordinate Court to another subordinate Court. It has to be exercised keeping in view the facts and circumstances of each case. The same cannot be exercised ipse dixit. The transfer of proceedings, which are filed in the court of competent jurisdiction, defeats the right of dominus litis to choose the forum. While deciding the application, the Court has to balance

*the convenience by taking into consideration relevant facts and circumstances and to see that the greater hardship is not caused by transfer of proceedings. Mere convenience of the parties or of any one of them may not be enough for exercise of power, but it must also be shown that the forum chosen by the other side will result in denial of justice. The choice of forum should not be to cause inconvenience to the adversary with a view to deprive that party of a fair trial. The power is to be exercised in the interest of justice. The cases of transfer of matrimonial proceedings stand on a little different footing in view of the special provision for transfer of petition under Section 21-A of the Hindu Marriage Act, 1955. There also, the payment of to and fro expenses for travel for attending the matter by the wife is one of the important considerations for refusal to grant transfer [See: (1996) 11 SCC 96 – **Kalpana Deviprakash Thakar (Smt.) Vs. Dr. Deviprakash Thakar**] and AIR 1997 SC 1036 – **Shivd Kumari Devendra Ojha Vs. Ramajor Shitla Prasad Ojha and others**].*

11. Section 21-A of the Hindu Marriage Act will not come into play in the proceedings as Section 21-A will be applicable only when both the proceedings are under Section 10 for judicial separation or under Section 13 for divorce. The proceedings at Sangamner i.e. HMP No.98/2020 is not under Section 13 but it is under Section 12 of the Hindu Marriage Act. Moreover, the proceedings initiated by the wife are under the Domestic Violence Act and under Section 9 of the Hindu Marriage Act and under Section 498-A of the I.P.C. Therefore, the principle enunciated under Section 21-A of the Hindu

Marriage Act cannot be made applicable to these proceedings.

12. It is not in dispute that applicant has instituted three proceedings at Ahmedpur, Tq. Ahmedpur, District Latur. These three proceedings are under Section 498-A of the I.P.C., under Section 9 of the Hindu Marriage Act for restitution of conjugal rights and under the Domestic Violence Act. It is alleged that applicant commutes daily from Ahmedpur to Ambejogai to work in Ramanand Teerth Government Medical College and Hospital, Ambejogai, Smt. Bodke states that applicant has quit that job and she is no longer in service. However, neither amendment is made nor affidavit to that effect is filed. Therefore, this submission cannot be considered.

13. In so far as transfer of matrimonial proceedings are concerned they stand on a different footing. Generally, convenience of wife should be considered for transfer of proceedings. It is true that there can be cases wherein convenience of husband will have to be considered. Nothing of this sort has been placed on record to show that husband because of some circumstances beyond his control is not in a position to travel and attend the Court at which the other proceedings are pending. In the case at hand, both the applicant and respondent are medical practitioners. He is not practising but he is employed in Pravara Medical College and Hospital, Loni, Tq. Rahata, District Ahmednagar. Therefore, this will not be a case where he will have to

neglect his patients and attend the Court proceedings. Respondent has alleged that proceedings for nullity of marriage are instituted alleging that applicant is a patient of schizophrenia. On one hand he is alleging that she is a patient of schizophrenia and on the other hand he wants her to travel 376 kms from Ahmedpur to Sangamner. These two things are contradictory with each other.

14. In the case of **Kalpna Deviprakash Thakar** cited (supra), the fact situation was completely different. In that case the husband was a medical practitioner and his absence from Mumbai would cause difficulty to his patients. Witnesses were principally from Mumbai. Wife had some near relations in Mumbai. On these facts, the Hon'ble Supreme Court declined to transfer the matter as per the prayers made by the wife. This is not the position in the case at hand. As indicated earlier nothing is brought on record to show that husband had any specific reason for not traveling to Ahmednpur.

15. After taking holistic view, it appears that the balance tilts in favour of the wife. It will be more inconvenient for the wife to travel from Ahmedpur to Sangamner. It will be a lot more convenient for the respondent to travel from Sangamner to Ahmedpur as he has to attend the other three proceedings pending at Ahmedpur. If this HMP proceeding is transferred to Ahmedpur, no inconvenience is likely to be caused to the respondent. In this

view of the matter, I am inclined to transfer the said proceedings. Hence the following order is passed:

ORDER

- I) Application is allowed.
- II) HMP No.98/2020 pending in the Court of C.J.(S.D.), Sangamner is transferred to the Court of C.J.(S.D.), Ahmedpur, District Latur.
- III) In these circumstances of the case parties to bear their own costs.

[M.G. SEWLIKAR, J.]