

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

901 MISC. CIVIL APPLICATION NO.251 OF 2018

SHEETAL PANKAJ PATIL (SHIRKE)
VERSUS
PANKAJ HIMMATRAO PATIL (SHIRKE)

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Advocate for Applicant : Ms. Langhe Pooja V.
Advocate for Respondent : Mr. Ambilwade Saisagar A.

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CORAM : V. K. JADHAV, J.
DATE : 17.03.2021

PER COURT :-

1. By consent, heard finally at admission stage.
2. Leave to amend the prayer clause to the extent of transfer of the proceedings from Family Court, Nashik to Civil Judge Senior Division, Rahata instead of Kopergaon.
3. This pertains to the transfer of the matrimonial proceedings from Family Court, Nashik to Civil Judge Senior Division, Rahata.
4. The learned counsel for the applicant-wife submits that though the applicant is a doctor on call in private Hospitals, Nashik, however, she is not getting the calls from those

hospitals due to outbreak of Covid-19. The applicant-wife resides with her parents at Kolhar, Taluka Rahata, District Ahmednagar. The learned counsel submits that there is a distance about 135 k.m. between Nashik to Kolhar. The learned counsel for the applicant submits that the applicant has already initiated two proceedings under the provisions of the Protection of Women from Domestic Violence Act, 2005 before Judicial Magistrate First Class, Rahata and in those proceedings, the respondent-husband has put his appearance. The learned counsel submits that the learned Magistrate has rejected the application seeking interim maintenance and being aggrieved by the same, the applicant-wife has preferred the appeal before the Sessions Court at Kopergaon. The learned counsel submits that the respondent-husband has filed the Hindu Marriage Petition No.A-80 of 2018 before the Family Court, Nashik for a decree of divorce. The learned counsel submits that the father of the applicant has recently undergone by-pass surgery and it is thus necessary for the applicant to stay in the house and to look after the health of the father. The learned counsel submits that it is difficult for the applicant to travel such a long distance to attend the court dates at Nashik.

On the other hand, it is easy for the respondent-husband to attend the court dates at Rahata or Kopargaon.

5. The learned counsel for the applicant-wife in order to substantiate her contentions, placed reliance on the following cases :-

- i) Sumita Singh vs. Kumar Sanjay and another, reported in AIR 2002 SC 396;
- ii) Mahadevi Gopal Mehetre vs. Gopal Prabhakar Mehetre, reported in 2015 (5) AIR Bom R 250;
- iii) Mona Aresh Goel vs. Aresh Satya Goel, reported in AIR 2000 SC 3512(1);
- iv) Ravinder Kaur vs. Hitinder Singh, reported in AIR 2000 SC 3403(2);
- v) Renu Gautam vs. Vinod Gautam, reported in AIR 2000 SC 3405 (1);
- vi) Anjali Ashok Sadhwani vs. Ashok Kishichand Sadhwani, reported in AIR 2009 SC 1374;
- vii) Vaishali Shridhar Jagtap vs. Shridhar Vishwanath Jagtap, reported in AIR 2016 SC 3584;
- viii) Reena Mehra vs. Rohit Rai Mehra and another, reported in AIR 2003 SC 1002;
- ix) Rakhi Banerjee vs. Subhankar Mukherjee, reported in AIR 2009 SC 928;

x) T. Gayatri Devi (Smt) vs. Tallepaneni Sreekanth (Dr.), reported in 2013 (5) All.M.R. 918;

xi) Anita Balkrishna Barge vs. Balkrishna Sopan Barge, reported in 2010 (6) All M.R. 685;

xii) Smita Dhananjay Patil vs. Dhananjay Krishnakumar Patil, reported in 2014 (1) AIR Bom R. 450;

xiii) Kalpana Pankaj Rozatkar vs. Pankaj Supadu Rozatkar, reported in 2013 (5) AIR Bom R 51;

xiv) Sayali Swapnil Kuber vs. Swapnil Harischandra Kuber, reported in 2014 (1) Mh.L.J. 584;

6. The learned counsel for the respondent-husband has strongly resisted the application on the various grounds. The learned counsel submits that the applicant-wife is a doctor by profession and she has her own clinic name and styled as Dr. Sheetal's Complete Care Physiotherapy Multi-Specialty Clinic at Nashik. The learned counsel submits that the applicant-wife has never resided either at village Kolhar or Kopargaon at any point of time and all the while the applicant-wife resides at Nashik. The learned counsel submits that the applicant-wife has filed the present transfer petition only to harass the respondent-husband. The learned counsel submits that at the

behest of the applicant-wife, the crime came to be registered against the respondent-husband for the offence punishable under Section 498-A of IPC. The said crime was registered at Indira Nagar Police Station, Nashik. The applicant-wife has filed Criminal Application No.3732 of 2018 before this Court for transfer of R.C.C. No.442 of 2016 from Nashik to Rahata. However, by order dated 23.09.2019, this Court (Coram : P. R. Bora, J.) has rejected the said application.

7. The learned counsel submits that in a case *Supriya Vs. Kamlesh*, this Court (Coram : S. B. Shukre, J.) in identical situation has observed that "a lady who faces inconvenience in undertaking such a journey, must come out with a specific case of inconvenience and she must state the reasons as to why the journey would be inconvenient for her".

8. In the cases relied upon by the learned counsel for the applicant-wife, the Supreme Court and even this Court reiterated that in matrimonial proceedings, the convenience of the wife is necessary to be considered.

9. In the instant case, there is no dispute about the distance and since the father of the applicant-wife has recently

undergone the by pass surgery, it is inconvenient for the applicant to leave the house and to travel such a long distance to attend the court dates at Nashik. Though the learned counsel for the respondent-husband has tried to convince that the applicant-wife resides at Nashik and she has her own clinic, however, the learned counsel has placed on record certain information from Goggle Site without taking any efforts to find out whether the said clinic if runs by the applicant-wife has any registration number etc. indicating that the applicant-wife infact runs the clinic at Nashik. I am also not impressed by the submissions made on behalf of the respondent-husband that in order to harass the respondent-husband, the applicant-wife has deliberately filed this application seeking transfer of the marriage petition from Nashik to Rahata. Even assuming that the applicant-wife resides at Nashik and runs her clinic at Nashik, it is difficult to accept that in order to harass the respondent-husband she has filed this application for transfer of the said marriage petition from Nashik to Rahata. In that way, the applicant-wife would also get equally harassed by attending the court dates at Rahata, if at all she resides in Nashik.

10. In view of the above and considering the ratio laid down by the Hon'ble Supreme Court and by this Court in the cases, as above, I am inclined to allow this application. Hence, I proceed to pass the following order :-

ORDER

- (i) Miscellaneous Civil application is allowed in terms of prayer clause "B".
- (ii) Miscellaneous Civil application is accordingly disposed off.

(V. K. JADHAV, J.)

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vmk/-