

IN THE HIGH COURT OF BOMBAY AT GOA

TRANSFER APPLICATION NO. 1 OF 2020

Sakshi Krishnanath Gosavi

..... Applicant

V e r s u s

Krishna Marutinath Gosavi

..... Respondent

Mr. Galileo Teles, Advocate for the Appellant.

Coram:- M. S. SONAK, J.

Date: 13th July 2021

ORAL ORDER

1. Heard Mr. Teles, the learned Counsel for the Appellant. The Respondent, though served, is neither present nor represented.

2. Mr. Teles, the learned Counsel, has relied on the order made by this Court in Transfer Application No. 5 of 2018 dated 28.02.2019 (Coram: Nutan D. Sardesai, J.), and the judgment and order dated 19.07.2018 in *Irene Blanch Khera & anr. vs. Glenn John Vijay* reported in (2018(6) *Mh.L.J.* 199), to submit that this Court can order the transfer of a

proceeding filed in the Court in the State of Maharashtra to the Court in the State of Goa.

3. In Transfer Application no. 5 of 2018, which was instituted by the present Applicant, this Court ordered the transfer of Hindu Matrimonial Petition No. 125 of 2018 from the Court at Islampur to the Court of the Senior Civil Judge, Bicholim. The Hindu Matrimonial Petition No. 125 of 2018 was a proceeding instituted by the present Respondent to seek restitution of conjugal rights.

4. In the present application, the Petitioner is seeking the transfer of Hindu Matrimonial Petition No. 190 of 2019 instituted by the very same Respondent in the Court of Civil Judge Senior Division at Islampur, seeking a divorce, to the Court of Civil Judge, Senior Division at Bicholim, Goa. Accordingly, the course adopted by this Court in Transfer Application no. 5 of 2018, can be adopted in this application as well.

5. Besides, Mr. Teles has referred to the decision of *Irene Blanch Khera* (supra), which has considered the provisions of Section 20 of the Goa

Daman and Diu Reorganisation Act, 1987, in terms of which, a common High Court came to be constituted for Maharashtra, Goa, Dadra and Nagar Haveli and Daman and Diu. In its decision, the learned Single Judge (Dr. Shalini Phansalkar Joshi) has considered the impact of these provisions and the provisions of the CPC as well.

6. The relevant observations on this aspect are to be found in paragraphs 16, 17, and 18, which read as follows :

16. The question, whether it has changed the position as such in respect of exercise of the jurisdiction by the Principal Seat at Goa for the State of Goa and the Principal Seat at Mumbai for the State of Maharashtra came for consideration before the Full Bench of this Court in the case of Edward Evan Pereira and Anr. V/s. Goncalo Jose Agnelo and Anr. 2011(5) Mh.L.J. 550 MANU/MH/0943/2011, wherein, in the light of the issues raised before it and after considering the provisions of Section 3 of the High Court at Bombay (Extension of Jurisdiction to Goa, Daman and Diu) Act, 1981, it was held that by virtue of this provision, the jurisdiction of the High Court at Bombay, including even the jurisdiction under the

Letters Patent, was extended to the Union Territory of Goa, Daman and Diu. It was further held that by virtue of the provisions of sections 20, 25 and 27 of the said Act, the High Court of Bombay being the common High Court for the State of Maharashtra and the State of Goa, the same jurisdiction, including the jurisdiction under the Letter Patent, is exercisable by the High Court of Bombay sitting at Panaji, Goa, which is exercisable by the High Court of Bombay at its Principal Seat at Bombay and its Benches at Nagpur and Aurangabad.

17. This judgment, thus, makes it clear that the High Court of Bombay, being a common High Court for the State of Maharashtra and 1 MANU/MH/0943/2011, 2011(5) Mh.L.J. 550 osk mca-144-2018.odt the State of Goa, the same jurisdiction including the jurisdiction under the Letters Patent is exercisable by the High Court of Bombay sitting at Panaji (Goa), which is exercisable by the High Court of Bombay at its Principal Seat at Bombay and its Benches at Nagpur and Aurangabad. Therefore, if the Principal Seat of the High Court at Bombay can transfer the proceedings pending in the judicial Districts in exclusive jurisdiction of its Benches at Aurangabad or Nagpur, then it follows that the Principal Seat of High Court at Bombay can also transfer the proceedings which are lying within the exclusive jurisdiction of its Seat at Goa, as

both the Courts viz. the Court in which proceedings are pending and the Court to which the proceedings are to be transferred are subordinate to the common High Court. The provisions of Section 20 of the Goa, Daman and Diu Reorganization Act, 1987 are clear to the effect that the High Court of Bombay is the common to both the State of Maharashtra and the State of Goa. Hence, there cannot be any distinction in exercise of jurisdiction in respect of the proceedings lying in the territories within the jurisdiction of the Principal Seat at Bombay and the proceedings lying in the exclusive jurisdiction of its Seat at Goa.

18. This position is further made clear by the decision of the Nagpur Bench in the case of Sangamitra w/o. Ramakant Royalwar vs. Ramakant s/o Gangaram Royalwar, 2009(1) Mh.L.J. 303 MANU/MH/0841/2008, wherein also the similar issue was raised before the Nagpur Bench, as to, whether the Bench at Nagpur has jurisdiction to transfer the matrimonial petition filed by the Respondent against the wife to another Court, when such proceeding was pending in the judicial districts of the exclusive jurisdiction of the Bench at Aurangabad and Principal Seat at Mumbai. While deciding the said question, in paragraph No.17, it was held that, "in view of Rule 1 of Chapter XXXI of the Bombay High Court Appellate

Side Rules, 1960, the Bench of the Bombay High Court at Nagpur has the jurisdiction and competence to take cognizance of such Applications". Thus, the objection to that effect was overruled. Hence, it follows that if the Nagpur Bench is having the jurisdiction to transfer the proceedings, which are lying exclusively within the jurisdiction of another Bench, may be at Aurangabad or Principal Seat at Bombay, then the Principal Seat Bombay is required to be held as having the jurisdiction to transfer the proceedings pending exclusively within the jurisdiction of its Seat at Goa."

7. Now, coming to the merits, I find that the Applicant has given cogent reasons for seeking transfer. The Applicant has pointed out the hardships which are bound to result if the Applicant is required to attend to the proceedings at Islampur. Apart from the obvious financial difficulties, the Applicant has pointed out that the two children from the marriage are with her and the Respondent, has, despite orders from the Courts, defaulted in the payment of maintenance.

8. Having regard to the reasons sort out in the Civil Application, this transfer application is liable to be granted.

9. Accordingly, the Hindu Marriage Application No. 190 of 2019 presently pending before the Civil Judge, Senior Division at Islampur, Maharashtra, is hereby transferred to the Court of Civil Judge Senior Division at Bicholim, Goa.

10. This application is made absolute in terms of prayer clause (a).

11. The Registry to assist the Applicant in presenting this order to the Court of Civil Judge, Senior Division at Islampur, so that, the transfer is suitably effected and implemented. The Civil Judge, Senior Division, at Bicholim, Goa, to issue fresh notice to both the parties for appearance once the proceedings are received from the Court of Civil Judge, Senior Division at Islampur.

12. This transfer application is disposed of in the aforesaid terms.

M. S. SONAK, J.