

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**MISCELLANEOUS CIVIL APPLICATION NO.61 OF 2019
IN
MARRIAGE PETITION NO. 98 OF 2015**

Sou. Yashika Yogesh Sawant Applicant

Vs.

Shri. Yogesh Dashrath Sawant Respondent

Mr. Anand Patil i/by Mr. Anand Patil & Associates for Applicant
Smt. Geeta Mulekar for Respondent

Coram : NITIN W. SAMBRE, J.

Date : 16th JULY, 2021

P.C.:

1. This is an application taken out by Applicant/wife seeking transfer of Hindu Marriage Petition No. 98 of 2015 pending on the file of Family Court, Kolhapur to the Court of Civil Judge, Senior Division, North Goa.

2. Mr. Patil, learned counsel appearing for the Applicant would invite attention of this Court to the relevant facts, which are as under :

Parties got married on 10th November, 2009 at Kolhapur and the marriage came to be registered in Goa. It is informed that out of the wedlock, parties are blessed with a daughter, who is studying in 3rd standard, as on the date of filing of application in 2019 she was studying in 1st standard.

3. The proceedings of which, the transfer is sought by the Applicant-wife is in the nature of Hindu Marriage Petition No. 98 of 2015 under the provisions of Section 13A (i-a) (i-b) of the Hindu Marriage Act, 1955 for dissolution of marriage.

4. Apart from aforesaid proceedings, it is brought to my notice that earlier by consent, the parties have initiated the proceedings under Sections 13-B of the Act for dissolution of marriage, which was later on withdrawn. There is dispute as to whether the marriage was solemnized at Goa or at Kolhapur.

5. In the aforesaid backdrop, so as to establish the plea of hardship, in favour of the Applicant-wife, Mr. Patil, learned counsel

appearing for the Applicant would urge that the applicant/wife is staying alongwith her daughter in Goa. As such, it is difficult for her to travel to Kolhapur, which is around 300 kms. on one side, to attend the proceedings. It is further claimed that the Respondent- Non Applicant is also permanent resident of Goa and that being so, no prejudice would be caused, if the proceedings are transferred to Goa.

6. While opposing the aforesaid submissions, Smt. Geeta Mulekar, learned counsel for the Respondent-Non Applicant would urge that this Court under Section 24 of the Code of Civil Procedure has no authority in law to order transfer of the proceedings, as prayed, as the transfer is sought from one State to another i.e. from Maharashtra to Goa. According to her, Section 24 C.P.C. is available to the parties only in case of intra-state transfer and not for interstate, which can be ordered by the Supreme Court in exercise of powers under Section 25 of C.P.C.

7. Further contention of the Respondent-Non applicant are, daughter is residing in Kolhapur and the applicant/wife often visits

Kolhapur to attend her and that being so, no prejudice is likely to cause, if the proceedings are continued at Kolhapur. It is also pointed out that the marriage and the parties last resided together at Kolhapur. The applicant's second marriage with the Non-Applicant without divorcing first husband is also sought to be relied on, so as to point out the voidable marriage.

8. Considered rival submissions.

9. The only issue at this stage requires consideration is whether the Applicant-wife will suffer hardship in case if the prayer for transfer is rejected. In the beginning, I chose to deal with the issue raised by the Counsel appearing for the Respondent/Non Applicant about absence of powers under Section 24 of C.P.C. in the matter of transfer of proceedings from the State of Maharashtra i.e. Kolhapur to State of Goa. It is not in dispute that even if Goa and Maharashtra are two different states, however, on the issue of judicial administration, both states are under the supervision of the High Court of Bombay. Similar issue raised earlier was answered by this Court (Coram:

Dr. Shalini Phansalkar-Joshi, J.) on same lines in Miscellaneous Civil Application No. 144 of 2018 in the case of Smt. Irene Blanch Khera and Another Vs. Shri. Glenn John Vijay decided on 19th July, 2018.

10. If we consider the provisions of Sections 3 and 4 of High Court at Bombay (Extension of Jurisdiction to Goa, Daman and Diu) Act, 1981 read with Section 9 and Section 20, it is clear that the Principal Seat of the common High Court for the State of Goa and the State of Maharashtra is High Court of Bombay. Paragraphs 17 and 18 of the said judgment reads thus :

“17] This judgment, thus, makes it clear that the High Court of Bombay, being a common High Court for the State of Maharashtra and 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 V/s. Ramakant s/o. Gangaram Royalwar 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."

11. In view of above, in my opinion, the contentions that this Court lacks jurisdiction to exercise powers under Section 24 of C.P.C. is liable to be rejected.

12. Even if, it is presumed based on the arguments of the learned counsel appearing for the Respondent- Non Applicant that the parties have got married at Kolhapur and last resided together at Kolhapur, that by itself will not mandate the Applicant to attend the proceedings at Kolhapur only. Rather the Counsel for the Non Applicant has sought to rely on the driving school business managed by the Applicant in the State of Goa, so as to earn her livelihood. Apart from above, it is brought on record by the Applicant that her daughter is staying in Goa State, as such the issue of hardship has to be answered in favour of the Applicant, as one way travel to the Applicant is around 300 kms., it is difficult for her to do so alongwith her minor daughter. The Counsel for the Non Applicant has made submissions that the Applicant started residing in the house of Non Applicant at Goa which establishes her claim that she is resident of Goa. That being so, in my opinion, a case for transfer ordering transfer of proceedings is made out.

13. As such, the Miscellaneous Civil Application is allowed in terms of prayer Clause 13(a).

(NITIN W. SAMBRE, J.)