

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
MISCELLANEOUS CIVIL APPLICATION NO.248 OF 2019

Laxmikant s/o Chandrakant Mhalagi .. Applicant

Versus

Deepali w/o Laxmikant Mhalagi & Anr. .. Respondents

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Mr.Gandhar Raikar with Mr.Sanket Singh i/b Meraki
Chambers for the Applicant.

Mr.Vaibhav V. Ugle for the Respondents.

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CORAM: BHARATI DANGRE, J.

DATED : 03rd DECEMBER, 2021

P.C:-

1. In the unusual circumstances, the applicant has moved this Court by invoking Section 24 of the Code of Civil Procedure, where he seeks transfer of the proceedings instituted by the wife/respondent No.1 in the Family Court at Latur to the Court of Civil Judge, Senior Division, Ponda, Taluka Ponda, Dist.North-Goa.

The proceedings which are sought to be transferred are; (A) Petition No.A-265/2017 filed under Section 13(1)(ia) of the Hindu Marriage Act, 1955 for dissolution of marriage, (B) Petition No.A-154/2017 filed under Section 125 of the Code of Criminal Procedure and, (C) Petition No.D-09/2018 filed under Section 26 of the Guardianship Act.

All the aforesaid three proceedings are filed in the Family Court at Latur and except the petition under the Guardianship Act, which is instituted in the year 2018, the other two proceedings are filed in the year 2017.

2. The applicant is seeking transfer of the proceedings to the Court at Ponda, Dist.North-Goa, since he is a resident of Marcel, Goa and the ground which compels him to seek transfer is that the applicant suffers from a disability and to substantiate the said submission, a certificate issued by the District Hospital, Margao-Goa in 2017 is placed on record, which certify his physical disability to the extent of 65%. Another reason which has been put forth is, the elder son of the couple, who resides with him, suffers from 'Autistic Spectrum Disorder' and the certificate to that effect is also placed on record.

3. In the wake of the such forlorn position in which the applicant finds himself, it is argued that it is difficult for him to take up the journey all the while to Latur to attend the proceedings and on account of his absence, even the proceedings are getting delayed.

Learned counsel for the respondents do not express any doubt about the factual situation, but he submits that the respondent No.1/wife, who is a house-maker, has another son, aged 5 years and she has to cater to him and even travelling long distance to Goa, which necessarily involve an overnight journey also pose difficulties to her, apart from the lack of

financial resources to undertake the said journey.

4. I can quite see that both the parties have expressed their difficulties in undertaking the journey either from Goa to Latur or from Latur to Goa. In such circumstances, there is only one solution which can ease them of their distress and that is to permitting the applicant to remain present in the proceedings through video conferencing or any other virtual mode available. The divorce proceedings, which are filed in the year 2017, are awaiting adjudication since 2017 and it is informed that the written statement has been filed, opposing the petition. The other two proceedings i.e. the proceedings under Section 125 of the Cr.P.C. and the proceedings under Section 26 of the Guardianship Act, are in the nature of miscellaneous proceedings and, since, they are pending before the very same Court i.e. Family Court at Latur, the Principal Judge of the Family Court is requested to bring these proceedings to the same Judge/Court so that the efforts can be made to proceed with them simultaneously and if necessary, common evidence can be allowed to be led.

One more reason why I deem expedient to refuse the transfer as requested is that the proceedings are before a competent court i.e. the Family Court, which can deal with the proceedings revolving the family matter in an expertise way and with utmost promptitude, which facility may not be available to the learned Civil Judge, since he is also burdened with other matters and the family matter may lose its priority.

5. Since all the three proceedings, mentioned above, are pending before the Family Court at Latur and the parties undertake that they shall co-operate with the learned Judge for expeditious disposal of the proceedings, a request is made to the Family Court at Latur to conclude all the three proceedings on or before 31/05/2022. The learned Judge is also requested to permit the appearance of the applicant/original respondent in the proceedings by way of video conferencing, particularly for cross-examination and also whenever it is possible, so that the strenuous and inconvenient journey, which is required to be undertaken by him, can be avoided. This can only be a solution to both the parties, who undisputedly are in distress for their own reasons. The parties, however, shall ensure that they will render co-operation to the Family Court in disposing of the proceedings in a time bound manner.

6. My attention is invited to the order passed by this Court on 14/11/2019 whereby the Family Court, Latur is restrained from proceeding with the hearing of the three petitions pending before it.

By consent of the parties, the said interim stay is vacated and the respondent No.1/wife is directed to file evidence affidavit in Petition No. A-265/2017 on or before 31/12/2021. Upon such an evidence affidavit being filed, the learned Judge, Family Court shall schedule the matter for evidence in the month of January, 2022 and proceed with the petition with utmost promptitude alongwith two other proceedings, pending before it.

7. With the aforesaid directions being issued, the miscellaneous civil application is dismissed.

(SMT. BHARATI DANGRE, J.)