

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO.110 OF 2020

ALONG WITH

WRIT PETITION NO.579 OF 2019

ALONG WITH

WRIT PETITION NO.4350 OF 2019

ALONG WITH

WRIT PETITION NO.4349 OF 2019

Rohini Pushpak Phule,]
Residing at C/o. Suresh Namadev]
Yadav, NL-4, Building No.21, Room]
No.7, Sector 11, Nerul, Navi Mumbai]
– 400 706.] ... Applicant

Versus

Pushpak Baburao Phule]
Residing at Vikas Colony, Landewadi,]
Bhosari, Pune – 411 039.] ... Respondent

...

Mr. Kishor Maru for the applicant in Misc. Civil Application No.110 of 2020.

Mr. Uday P. Warunjikar for respondent in Misc. Civil Application No.110 of 2020 and for the petitioner in Writ Petition Nos.579 of 2019, 4350 of 2019 and 4349 of 2019.

Ms. Chauhi Solanki i/b H.H. Nagi & Associates for the respondent in all the writ petitions.

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CORAM : SMT. BHARATI DANGRE, J.

DATED : 21ST OCTOBER, 2021.

JUDGMENT:-

1. By an administrative order passed on 08/10/2021, Misc. Civil Application No.110 of 2020 is clubbed with Writ Petition Nos.579 of 2019, 4350 of 2019 and 4349 of 2019 and directed to be placed before the court taking up miscellaneous civil applications. In terms of the aforesaid order passed on the administrative side, the miscellaneous civil application and the three writ petitions are placed before me for hearing.

2. I have heard Mr. Warunjikar, learned counsel appearing for the petitioner-husband in the three writ petitions and for the respondent in Misc. Civil Application No.110 of 2020. Ms. Chaula Solanki represents the respondent-wife in the aforesaid writ petitions. Mr. Kishor Maru represents the applicant-wife in the miscellaneous civil application.

3. All the four proceedings revolve around the relationship between the husband - Pushpak Baburao Phule and his wife - Rohini Pushpak Phule, who were married on 26/03/2006. Out of the wedlock, a male child is born and since the marriage between the two, went through a rough phase, the husband instituted a marriage petition under Section 13(1)(ia) and (ib) of the Hindu

Marriage Act, 1955 in the Court of Civil Judge, Senior Division, Pune for dissolution of marriage. The petition is numbered as M.J. Petition No.A-303 of 2017 and is pending before the Family Court at Pune.

4. Misc. Civil Application No.110 of 2020 is filed by the wife, seeking transfer of the said proceedings to the Family Court at Thane and, by the said application filed under Section 24 of the Civil Procedure Code, the transfer is sought on three grounds; the foremost being the distance between Thane and Pune is about 200 kilometers and her father, who is aged and her brother, who is employed abroad, cannot accompany her to attend the proceedings at Pune. The second ground put forth being, she will have to spend hefty amount on travelling from Navi Mumbai to Pune and spend a day for attending the matter and she will have to leave Navi Mumbai in the early morning, which would pose a difficulty for her to travel along with the child. The small child is also not keeping well is also another ground for seeking transfer.

5. Learned counsel for the applicant-wife vehemently submits that the convenience of the wife should be the prime importance while considering an application under Section 24 of the CPC to transfer the proceedings from one court to another. His submission is to the effect that the past conduct of the husband i.e. the harassment caused to the applicant and the act of desertion demand that the proceedings shall be transferred to the court at

Thane. It is also argued that in the year 2008, the husband has instituted a petition for restitution of conjugal rights and when with the aid of some mediators, the applicant expressed her willingness to accompany him and filed a pursis to the effect, the husband refused to take her for cohabitation and instead, filed a petition seeking divorce in the month of March, 2017. The said conduct of the husband is highlighted to grant the relief prayed for.

Reliance is placed on the decision of the Apex Court in the case of **Sumita Singh v. Kumar Sanjay & Anr.** reported in **AIR 2002 SC 396**, where it is held that wife's convenience should be looked at and the proceedings were transferred from Bojpur, Bihar to Court at Delhi, where the wife was living and working.

6. Per contra, learned counsel Mr. Warunjikar has submitted that the applicant wife is not residing in Thane, but she is residing in Nerul, Navi Mumbai and from Nerul to Pune, the distance is approximately 140 kilometers, which can be covered in two hours. Mr. Warunjikar would urge that the past conduct of his client is of no consequence in deciding the application for transfer of proceedings and he is ready and willing to arrange for the actual expenses of the applicant, in case the court is inclined to continue the proceedings filed by his client in the Court of Civil Judge, Senior Division, Pune. Mr. Warunjikar would further submit that the child, who has been cited as a reason for transfer of the proceedings is not a small child, but he is a young boy aged 14 ½ years as of today and, therefore, the normal ground that the wife is

required to take care of the child cannot be pressed into service by the applicant.

7. The transfer of the proceedings is sought from Pune to Thane and it is not denied by the applicant-wife that she is residing in Navi Mumbai. The respondent-husband has instituted the divorce proceedings in the Court of Civil Judge, Senior Division, Pune and the proceedings are pending from the year 2017. It is informed that they have reached the stage of evidence. The respondent is the *dominus litis* and it is his choice to institute the proceedings in the court, which has jurisdiction to entertain the same and accordingly he has instituted the proceedings in the court at Pune. When the wife is seeking transfer, she will have to make out a case justifying the exercise of power by this court under Section 24 of the CPC.

8. It is trite that the said power cannot be exercised casually and just for the sake of asking, but the persons invoking exercise of such power must demonstrate that the proceedings should be transferred as per the choice and convenience of the respondent. One of the factors may be the inconvenience of the party, but it cannot be the sole factor. The distance which the applicant will have to travel from Navi Mumbai to Pune is barely 140 kilometers and can be covered in two hours as there is a highway which runs between the two stations. The case relied upon by learned counsel, in the case of **Sumita Singh (supra)** is a case, where the

wife would be required to take up a travel of about 1100 kilometers from Delhi to attend the proceedings in Bhojpur, Bihar. The verdict, therefore, will have to be read in the context of the said fact, which the Hon'ble Apex Court has taken into consideration. But, in this case the distance is barely 140 kilometers and can be covered in two hours. The respondent-husband is also serving at Pune and he has expressed difficulty in attending the proceedings. The respondent-husband has instituted the proceedings in the court at Pune and since the proceedings have reached at the stage of evidence, I do not deem it expedient to grant the request of transfer of proceedings to Thane.

9. Inconvenience can be one of the grounds for transfer of proceedings, but surely, it cannot be the sole ground. The applicant is a working lady and it is not difficult for her to travel to Pune, without being accompanied by any person and, therefore, the old age of her father which is cited as a difficulty is not a ground, which can be looked into. Further, the child Arnav is aged 14 ½ years and the excuse put forth that she has to cater to him, also do not help the applicant in seeking the transfer of the proceedings to Thane. However, it is necessary that when the applicant travels to Pune for attending the proceedings, she should travel in a comfortable way and the learned counsel for the respondent-husband Mr. Warunjikar fairly makes a statement that he shall arrange for her travelling expenses in case she is desirous of travelling to Pune for attending the proceedings either by private

taxi or in a luxury bus, which frequently runs between Pune and Navi Mumbai. Since the financial burden arising out of the said travel is, taken care of by the husband, I see no justiciable ground to grant the application filed by the applicant-wife seeking transfer of Hindu marriage petition filed in Pune to Thane.

However, since the M. J. Petition is pending from 2017 and the proceedings of Marriage Petition No.303 of 2017 pending in the Court of Civil Judge, Senior Division, Pune has been stayed by order of this court dated 01/04/2019, endeavour shall be made by learned Civil Judge, Senior Division, Pune to dispose of the said marriage petition, within a period of six months from re-opening of the court after Diwali vacation and the time shall start running from 15/11/2021. The parties shall render their co-operation to learned Judge for expeditious culmination of Marriage Petition No.303 of 2017 and would avoid unnecessary adjournments.

10. With the aforesaid direction, the Misc. Civil Application No.110 of 2020 is disposed of.

Writ Petition No.4349 of 2019

11. In this writ petition, the petitioner-husband has assailed the order dated 17/11/2018 passed by the Civil Judge, Senior Division, District Pune on an application filed under Section 24 of the Hindu Marriage Act seeking maintenance pendente lite for herself as well

as for her minor son Arnav and medical expenses and fees of her son, etc.

12. By the said order, the application is allowed and the petitioner-husband is directed to pay an amount of Rs.5,000/- per month to the respondent-wife for herself from the date of the order and Rs.20,000/- per month for the son from the date of the application i.e. 28/08/2017. The application has been filed in Misc. Petition No.303 of 2017, instituted by the petitioner-husband in the Court of Civil Judge, Senior Division, Pune.

13. In support of the petition, Mr. Warunjikar argue that while passing the said order, the court has not taken into consideration the earning capacity of the wife, when it is his case that she is earning Rs.4 lakhs per annum from her job and he has taken health insurance and medical policies for his wife and the son. However, in the wake of the directions issued in Misc. Civil Application No.110 of 2019, Mr. Warunjikar fairly states that he shall continue to pay the maintenance as ordered under the impugned order and does not propose to contest the said order on merits.

14. Learned counsel for the respondent-wife, however, categorically makes a statement that the petitioner-husband is in arrears of maintenance, as directed to be paid by the order dated 17/11/2018 Mr. Warunjikar fairly states that as a prerequisite condition to the time bound conclusion of the marriage petition, he

undertakes to pay the arrears of maintenance under the impugned order, provided he is granted permission to make the payment in two instalments to enable him to clear the arrears upto 30/09/2021. Mr. Warunjikar, on instructions, makes a statement that first of such instalments of the arrears due and payable till 30/09/2021 shall be paid by him on or before 10/11/2021 and the second instalment shall be cleared on or before 07/12/2021.

15. In view of the aforesaid statement, Writ Petition No.4349 of 2019 is disposed of.

Writ Petition No.4350 of 2019

16. This petition is filed by the petitioner-husband, where he challenges the order passed by the Civil Judge, Senior Division, Pune on an application moved by the petitioner-husband seeking direction to produce her earning and property documents. The learned Judge on 17/11/2018 has passed the following order on the said application:

“Perused application and say. Heard both the sides. As the income of the wife that is quoted by the husband is dealt with for disposal of application seeking interim relief, this application is filed as the said aspect is a part of evidence and trial.”

17. Mr. Warunjikar fairly states that in the wake of order passed

in the miscellaneous civil application, he does not press the writ petition as the documents were sought while deciding the application under Section 24 of the Hindu Marriage Act and since the proceedings are likely to be concluded within six months, the petition is not pressed.

18. In the wake of the aforesaid statement, Writ Petition No.4350 of 2019 is disposed of as not pressed.

Writ Petition 579 of 2019

19. By the present writ petition, the petitioner-husband challenges the order passed by the Civil Judge, Senior Division, Pune on 7/12/2018, below Ex-40, which is an application filed by the husband under Section 26 of the Hindu Marriage Act. By the said application, the petitioner claimed right of access to the child, Arnab and learned Judge has partly allowed the application and the petitioner is permitted to meet the child in the office of the Superintendent, Civil Judge, Senior Division, Pune, between 4.00 p.m. and 5.00 p.m. on the first Saturday of every month. During the access time, mother of the child is at liberty to be in the vicinity without she being a barrier to them.

20. Learned counsel for the respondent-wife submits that the access, which is granted in the Court of Civil Judge, Senior Division, Pune is not the appropriate place to avail the access and

she submits that if the access can be granted to the petitioner at the Family Court at Thane, where there is conducive atmosphere for developing a bond between the father and the son, it would be in the interest of the child. It is also stated that the child has to be taken all the way from Navi Mumbai to Pune so that the father can avail the access and the child tends to get tensed and if the father is allowed to have access in the Family Court, Thane, it would serve better the interest of the child.

21. Learned counsel for the petitioner, Mr. Warunjikar accedes to the said request, to only make a request that the access shall be availed for atleast for a period of two hours to begin with so that he will be able to establish proximity with the child and gradually the time can be increased subject to the response of the child.

22. I find sufficient substance in the submission of both the respective counsel. The boy Arnav is now 14 ½ years old and he is capable of understanding and since it is informed that the father had no access to the child in his impressionable age, it would be appropriate for a bond to be developed between the two and if the child can be accessed at nearby place i.e. in the Family Court at Thane, the child will take it easy, rather than he travelling to Pune on every date of access. I also deem it expedient to extent the time limit of access from one hour to two hours.

23. Since the respondent-wife is present in the court and

consents to the access of the child being granted to the petitioner on 30/10/2021 between 4.00 p.m. and 6.00 p.m. in the premises of Family Court at Thane and further access to be granted on the next time i.e. on 20/11/2021 between 3.00 p.m. and 5.00 p.m. in the same venue, I pass the following order:

ORDER

(1) The petitioner shall avail access of the child Arnav on 30/10/2021 in the Family Court at Thane between 4.00 p.m. and 6.00 p.m. The second access shall be availed by the petitioner on 20/11/2021 between 3.00 p.m. and 5.00 p.m. in the same venue. The respondent-wife is at liberty to be present in the nearby vicinity if she deems it appropriate and necessary, but the child should not be informed about her presence.

(2) Neither of the parties shall take any picture or videos of the meetings.

24. List Writ Petition No.579 of 2019 for further hearing on 25/11/2021 when the parties shall report to this court about the outcome of the meetings between the father and the child so that further orders can be passed.

25. In the result, Misc. Civil Application No.110 of 2020, Writ

Petition Nos.4349 and 4350 of 2019 are disposed of. Writ
Petition No.579 of 2019 be listed for further hearing on
25/11/2021.

[SMT. BHARATI DANGRE, J.]