

R.M. Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO. 78 OF 2020

Manisha Mansaram Pagar

.. Applicant

Versus

Manasram Pandit Pagar

.. Respondent

.....

Mr. Ayodhya Patki a/w Mr. Nitesh Gupta i/by Mr. Pravartak Suhas
Patghak for the Applicant

None for Respondent

.....

CORAM : MILIND N. JADHAV, J.

DATE : 25th November, 2022.

P.C.:

. Heard.

2. Though served, none appears for the Respondent.

3. Parties got married on 30.01.1996. In 2019 Respondent – husband initiated proceedings for dissolution of marriage pending on the file of Family Court, Nashik of which transfer is sought by Applicant to District and Additional Sessions Court, Malegaon, Nashik / Civil Judge Senior Division, Malegaon Court, District Nashik, where she resides.

4. Perused grounds of hardship which are pressed in paragraph Nos. 9 to 17 of the Application. Applicant – wife along with her two children (son and daughter) is residing at her matrimonial house at

Malegaon, Nashik since 2016. Her son has filed RCS No. 122/2017 against Respondent under Section 20(2) of the Hindu Adoption and Maintenance Act, 1956 for claiming education expenses and maintenance. Applicant's Criminal Application No. 1446/2016 under the Domestic Violence Act, 2005 is pending. As Applicant – wife will be required to travel from Malegaon to Nashik to attend the proceedings, it will cause prejudice and hardship to her.

5. Having considered the Applicant's case, I am of the considered opinion that in the facts and circumstances of the present severe prejudice will be caused to the Applicant, if the present transfer application is not granted.

6. It is well settled by a catena of judgments of the Supreme Court as well as this Court that the primary concern in such matters is the convenience of the wife.

7. The cardinal principle for exercise of power under Section 24 of CPC is that the ends of justice demand the transfer of the suit, appeal or other proceeding. In matrimonial matters, wherever the Courts are called upon to consider the plea of transfer, the Courts have to take into consideration the economic soundness of either of the parties, the social strata of the spouses and behavioural pattern, their standard of life antecedent to marriage and subsequent thereto and circumstances of either of the parties in eking out their livelihood and under whose protective umbrella they are seeking their sustenance to

life. Generally, it is the wife's convenience which must be looked at by the Courts, while deciding a transfer application and merits of the case need to be considered.

8. At this stage, the relevant observations made by the Supreme Court in para No.14 of its judgment in ***Kulwinder Kaur alias Kulwinder Gurcharan Singh Vs. Kandi Friends Education Trust and others***,¹ can be gainfully followed in the present case. Paragraph No.14 reads as under:-

“Although the discretionary power of transfer of cases cannot be imprisoned within a strait-jacket of any cast-iron formula unanimously applicable to all situations, it cannot be gainsaid that the power to transfer a case must be exercised with due care, caution and circumspection. Reading Sections 24 and 25 of the Code together and keeping in view various judicial pronouncements, certain broad propositions as to what may constitute a ground for transfer have been laid down by Courts. They are balance of convenience or inconvenience to plaintiff or defendant or witnesses; convenience or inconvenience of a particular place of trial having regard to the nature of evidence on the points involved in the suit; issues raised by the parties; reasonable apprehension in the mind of the litigant that he might not get justice in the court in which the suit is pending; important questions of law involved or a considerable section of public interested in the litigation; interest of justice demanding for transfer of suit, appeal or other proceeding, etc. Above are some of the instances which are germane in considering the question of transfer of a suit, appeal or other proceeding. They are, however, illustrative in nature and by no means be treated as exhaustive. If on the above or other relevant considerations, the Court feels that the plaintiff or the defendant is not likely to have a fair trial in the Court from which he seeks to transfer a case, it is not only the power, but the duty of the Court to make such order?”

9. In the present case if the Applicant - wife is forced to go from Malegaon to Family Court, Nashik, it would amount to denial of

1 AIR 2008 SC 1333

justice to her. It is settled principal of law that justice is not only to be done but it should also appear to have been done. Hence, to strike a balance between the parties with a view to do complete and substantial justice and proceeding on a holistic view of the matter, I am of the considered view that it would be just and expedient to transfer the proceeding filed by Respondent-Husband from Family Court, Nashik to Malegaon Court, Nashik.

10. Since the contentions are not controverted, in my opinion, ground of hardship has to be considered in favour of the Applicant, as one way distance between Malegaon and Nashik is 107 kilometers.

11. In view of the above, Application is allowed and disposed of in terms of prayer clause (a) which reads as under:-

“(a) Be pleased to call for record and proceeding in respect of the Hindu Marriage Petition No. A-426 of 2019 pending before the Family Court, Nashik Road, at Nashik filed by the Respondent under Section 13(ia)(ib) of the Hindu Marriage Act, 1955 and after verifying the same be pleased to transfer the Hindu Marriage Petition No. A-426 of 2019 pending before the Family Court, Nashik at Nashik to District and Additional Sessions Court, Malegaon, Nashik / Hon. C.J. Sr. Divn. Malegaon, Dist. Nashik.”

[MILIND N. JADHAV, J.]

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signed by
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