

R.M. Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO. 69 OF 2021

Shital Rajabhau @ Rajesh Bhutekar @
Shital Vikas Jadhav

.. Applicant

Versus

Rajabhau @ Devidas Bhutekar

.. Respondent

.....
Mr. Samir A. Kumbhakoni for Applicant
None for Respondent

.....

CORAM : MILIND N. JADHAV, J.

DATE : 23rd November, 2022.

P.C.:

1. On 22.03.2022, this Court passed the following order:-

"1. It is informed that the proceedings of which the transfer is sought are already transferred to the Court of learned Family Court, Usmanabad and same are yet to be numbered. As such, counsel for the applicant is unable to furnish details. This Court has already twice adjourned the matter for said cause.

2. In view of above, adjourned to 15th June, 2022, by way of a last chance."

2. On 15.06.2022, this Court passed the following order:-

"1. None appeared on behalf of the Respondent, who is served as per office note.

2. In order to give an opportunity to the Respondent to contest the application, stand over to 29.06.2022.

3. Till the returnable date, the proceeding of which the transfer is sought, shall remain stayed.

4. The amendment which the applicant is permitted to carryout by order dated 22.02.2022 be carried out within the next week."

3. Proceedings have already been transferred to Usmanabad,
but stayed by this Court.

4. Though served, none appears for the Respondent.

5. Parties got married on 02.12.2010 at Barshi. Respondent-husband initiated proceedings being Marriage Petition No. 73/2020 for restitution of conjugal rights pending on the file of Civil Judge Senior Division, Usmanabad of which transfer is sought by Applicant to Civil Judge Senior Division, Barshi. Applicant has filed Marriage Petition under Section 13 of the Hindu Marriage Act, 1955 being M.P. No. 153/2020 in the Court of Civil Judge Senior Division, Barshi.

6. Perused grounds of hardship which are pressed in paragraph Nos. 13 onwards of the Application. There is one minor child (son) aged 7 years who is in custody of the Applicant. As Applicant-wife will be required to travel to Usmanabad to attend the proceedings, it will cause prejudice to her. It is seen that Applicant is presently residing at Palghar (Thane) with her son and she works as a teacher (Shikshan Sevak) at Zilla Parishad, Thane. She has also pleaded about the threats administered to her by the Respondent.

7. 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.

8. 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.

9. 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.

10. 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

¹ AIR 2008 SC 1333

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?”

11. In the present case if the Applicant - wife is forced to go from Usmanabad, it would amount to denial of 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 proceedings to Barshi.

12. Since the contentions are not controverted, in my opinion, ground of hardship has to be considered in favour of the Applicant.

13. As such, Application is allowed and disposed of in terms of prayer clauses (c) and (c1) which read as under:-

“(C) This Hon’ble Court may be pleased to transfer the Marriage Petition No. 73 of 2020 which is pending before the learned Civil Judge Senior Division, Usmanabad to the file of of the learned Civil Judge Senior Division, Barshi and direct to decide both the Marriage Petitions by the same court of Ld. C.J.S.D., Barshi.

(C1) This Hon’ble Court may be pleased to transfer the Marriage Petition A No. 49 of 2021 pending before learned Family Court, Usmanabad to learned C.J.S.D., Barshi”.

[MILIND N. JADHAV, J.]

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by RAVINDRA
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AMBERKAR
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