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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO. 118 OF 2021

Gorimaa Narendrasingh Rawat @ Gorimaa
Banerjee .. Applicant
Versus
Narendrasingh S/o Udaysingh Rawat .. Respondent

.....
Ms. Shweta R. Rathod i/by Elixir Legal Services for the Applicant.
Ms. Tejashree P. Joshi, Advocate for the Respondent.
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CORAM : MILIND N. JADHAV, J.

DATE : 22nd November, 2022.

P.C.:

. Applicant – wife, by way of instant transfer Application under Section 24 of the Code of Civil Procedure, 1908 (for short "CPC") seeks transfer of a Divorce Petition A/456/2021 filed by Respondent - husband before the Family Court, Nagpur to the Family Court, Bandra.

2. I have heard Ms. Rathod, Advocate appearing for Applicant and Ms. Joshi, learned Advocate appearing for Respondent. Affidavit-in-Reply dated 11.02.2022 filed by Respondent has been considered.

3. Applicant's marriage was solemnized with Respondent on 08.12.2016 at Nagpur. A child name Shanaya was born to them out of the said wedlock; she is two years old today and presently in care and

custody of the Applicant.

3.1. After their marriage Applicant and Respondent came to Mumbai and resided at Applicant's maternal home for one year. Respondent joined Evonik India Private Limited as Assistant Manager Supply Chain Management in October 2017. In May 2017 Applicant suffered miscarriage. In March 2018 Applicant and Respondent moved themselves to an independent flat on leave and licence basis at Evershine Society, Mhada Colony, Chandivali, Mumbai.

3.2. In June 2019 Applicant gave birth to their child at Mumbai. That within 6 days thereafter due to quarrel Respondent removed himself and went back to the licensed premises at Andheri.

3.3. On 09.07.2019 Applicant received Respondent's Advocate's notice. In her reply dated 19.07.2019 she refuted the allegations.

3.4. In March 2021 Respondent filed Divorce Petition No. A/456/2021 in Family Court No.3, Nagpur seeking dissolution of their marriage. Applicant thereafter received notice dated 05.07.2021 to appear before the Family Court in Nagpur.

4. Applicant has submitted that her minor daughter has a medical condition of her heart and Hemangioma in right chest and is therefore required to undergo regular checkup treatment and vaccination and is entirely dependent on her. The Medical reports of the child are annexed at Exh. "C" to the Application. Applicant has

submitted that at present she is residing with her mother at Wadala, Mumbai. That she is not employed and is a housewife who needs to take care of her daughter Shanaya as she is minor old and also suffering from the above mentioned medical issues.

5. In view of the above reasons, she has prayed to transfer of proceedings i.e. Divorce Petition No.A/456 of 2021 from Family Court, Nagpur to Family Court, Bandra, Mumbai.

6. **PER-CONTRA**, Respondent has submitted that the medical issue pertaining to their child has been stated merely to gain sympathy of the Court. Respondent in his reply has stated that children with minor heart defects may not need any treatment and medicines are needed to be taken but surgery is required depending upon the size of the hole. He has also described Hemangioma. Thus he has not denied the medical condition of their child. Respondent however has submitted that his father is suffering from diabetes whereas his mother is suffering from high blood pressure and severe joint pain. That he needs to take their care on regular basis. That he was away from them for 11 years and therefore now needs to be with them. Another reason cited by Respondent is that he is employed and the In-charge of India Supply Chain and Logistics for Medical Business Segment which supplies essential chemicals for haematology and Clinical Chemistry Analysis. That he is in-charge of the Supply Chain Management Division based in Nagpur and his profile includes several responsible

tasks on behalf of his company.

7. He has further stated that Applicant belongs to a rich family and he belongs to a middle-class family. That Applicant has four maids for doing her household chores and she is living a luxurious lifestyle whereas he has no facility of maids and such luxury at his home. These submissions are not substantiated. He has therefore sought dismissal of the present Application.

8. Having considered the rival contentions and submissions advanced by the parties, 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.

9. 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. I have noted that in the present case the daughter is three years old today and suffers from a heart problem. Respondent has also not denied this.

10. It is undisputed that the Applicant - wife is living with the minor child (two years) with her mother at Wadala and she is not working though it is argued that she has completed her L.L.B. and can look after the child. The distance between Nagpur to Mumbai is approximately 800 kms.

11. 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.

12. 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

1 AIR 2008 SC 1333

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?”

13. In the present case if the Applicant - wife is forced to go from Mumbai to Nagpur, 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 divorce proceeding from Nagpur to Mumbai.

14. Hence, the following order:-

- (i) The learned Principal Judge, Family Court at Nagpur is directed to transmit the papers and proceedings of the Divorce Petition No.A/456/2021 to the Principal Judge, Family Court at Bandra, Mumbai;
- (ii) The parties as well as the learned Principal Judge, Family Court, Nagpur and the Principal Judge, Bandra, Mumbai to act on an authenticated copy of this order;
- (iii) Parties and/or their Advocates shall appear before the Principal Judge, Bandra, Mumbai on 01st December,

2022 at 11:00 a.m. and obtain appropriate orders/directions;

(iv) The above Misc. Civil Application is allowed in the aforesaid terms, with no order as to costs.

[MILIND N. JADHAV, J.]

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TRAMBAK
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Date: 2022.11.24
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