

S.S.Kilaje

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****MISC. CIVIL APPLICATION NO.433 OF 2022**

Sheetal Jayant Dharpale

.. Applicant

Versus

Jayant Shrirang Dharpale

.. Respondent

WITH**MISC. CIVIL APPLICATION NO.480 OF 2022**

Jayant Shrirang Dharpale

.. Applicant

Versus

Sheetal Jayant Dharpale

.. Respondent

.....

- Ms. Kavita M. Pawar for Applicant in MCA 433/2022 and for Respondent in MCA 480/2022
- Ms. Rachana Harpale i/by Mr. Nitin P. Deshpande for Applicant in MCA 480/2022 and Respondent in MCA 433/2022

CORAM : MILIND N. JADHAV, J.**DATE : DECEMBER 02, 2022.****P.C.:**

1. By Misc. Civil Application No. 433 of 2022 Applicant – wife
has prayed for :

“(a) The Hon’ble Court may direct and order to transfer the Marriage Petition being Petition A/1228 of 2022 which is pending before the Learned Principal Judge Family Court No.1, Pune, to the Learned Family Court, Solapur.”

2. By Misc. Civil Application No. 480 of 2022 Applicant –
husband has prayed for :

“(a) The Hon’ble Court may transfer of PWDVA No. 19/2022 pending in the Court of Chief Judicial Magistrate, Solapur and HMP No. 61 of 2022 pending in the Court of Civil Judge, Senior Division, Solapur to Family Court, Pune.”

3. For the sake of the convenience parties shall be referred to as husband and wife since cross Petitions are filed by both parties.

4. In Misc. Civil Application No. 433 of 2022 wife seeks transfer of Marriage Petition. The wife seeks transfer of Divorce Petition filed by husband from Pune to Solapur, where she is residing with her parents. Admittedly there is one son (2½ years old) who is in the care and custody of wife. The grounds for seeking transfer are stated in paragraph Nos. 17, 21, 22 of the application. Ms. Pawar, learned Advocate submitted that wife is financially dependent for her expenses as well as for taking care of her infant son on her mother with whom she lives in Solapur. That she has filed application for restitution of conjugal rights and Domestic Violence Act proceedings, both at Solapur. That she does not have any source of income and is entirely dependent on her mother as her father expired 2½ years ago and is living in a destitute condition with her son. That she has no means to travel to Pune, a distance of 300 kms. for attending the divorce case filed by the husband from the financial point of view as well as in view of her infant son and their safety. In her application, wife has leveled serious charges against the husband for harassment and for demand of money. That she apprehends danger to her life if she travels to Pune to defend the divorce proceedings. Further she has no means to stay in Pune and no relatives in Pune with whom she can put up. That her infant son is completely dependent on her for his

nourishment. After perusing the application of the wife and considering the submissions I am unable to disbelieve the same.

5. **PER CONTRA**, Ms. Harpale, learned Advocate for Respondent-husband has submitted that in the cross Petition husband has sought transfer of the D.V.Act proceedings and the Application for restitution of conjugal rights from Solapur to Pune. She submitted that both proceedings filed by wife in Solapur were in the nature of a counterblast to the divorce proceedings filed by the husband at Pune.

6. Record indicates that Misc. Civil Application No. 433 of 2022 was filed by the wife on 19.08.2022 whereas Misc. Civil Application No. 480 of 2022 filed by the husband on 29.11.2022. Perusal of Misc. Civil Application No. 480 of 2022 reveals that it is drafted cursorily and the only ground for opposing the transfer by the husband is that he is ready and willing to provide travel expenses by public transport to the wife. That apart, there is no other ground whatsoever stated by the husband in his application.

7. Submissions made by the Advocates have received due consideration of the Court.

8. Record further indicates that husband is an agriculturist and मंत्रिक (Mantrik). That apart relatives of the husband i.e. his father is in service whereas his sisters are all employed. Record further indicates that husband has his own private vehicle in Pune. Record also indicates that the wife has filed several Non Cognizable Complaints

(NCs') against the husband in Pune.

9. It is seen that the difficulty that would be faced by the wife in the facts and circumstances of the present case which are alluded to hereinabove would be far greater in proposition than the husband. Misc. Civil Application filed by the husband, as seen is vague and insufficient. It does not give any adequate sufficient and cogent reasons whatsoever for consideration. Hence, M.C.A. No. 480 of 2022 is comprehensively dismissed.

10. In so far as M.C.A. No. 433 of 2022 is concerned, the wife has made out a substantive case for seeking transfer of the divorce petition from Pune to Solapur.

11. It is seen that the infant son is in the care and custody of the wife and requires her constant attention since he is two years old.

12. As the wife will be required to travel from Solapur to Pune to attend the divorce proceedings, it will certainly cause severe prejudice and hardship to her.

13. 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.

14. 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.

15. In the present case if the Applicant - wife is forced to go from Solapur to Pune, 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 Marriage Petition being Petition A/1228 of 2022 filed by Respondent-Husband from Family Court No.1, Pune to Family Court, Solapur.

16. In my opinion, the inconvenience caused to the wife needs to addressed and ameliorated with immediate effect. The ground of hardship has to be considered in favour of the wife, as one way distance between Pune and Solapur is 300 kilometers.

17. As such, Misc. Civil Application 433 of 2022 is allowed in terms of prayer clause (a).

18. Misc. Civil Application No. 480 of 2022 is dismissed.

[MILIND N. JADHAV, J.]

Digitally
signed by
SONALI
SATISH
KILAJE
Date:
2023.01.13
10:40:13
+0530