

ISM

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO. 233 OF 2021

DHRUTI RAJESH MEHTA

....APPLICANT

V/s.

RAJESH LAXMIDAS MEHTA

.....RESPONDENT

Ms. Ishika D. Tolani a/w Mr. Navin P. Sachanandani a/w Ms. Pratiksha Udeshi Advocate for the Applicant
Ms. Yashashree Munde i/b Parinam Law Associates for the Respondent

CORAM : NITIN W. SAMBRE, J.

DATE: FEBRUARY 15, 2022.

P.C.:

- 1)** On 09/02/1992, Applicant and non-Applicant got married and are blessed with two children who are by this time are major.
- 2)** Out of differences, Applicant-wife initiated proceedings under Section 12 of the Protection of Women from Domestic Violence Act so also lodged F.I.R. with Koregaon Park Police Station, Pune.
- 3)** I am informed that Respondent-Husband initiated proceedings under Section 13(1) (ia) of the Hindu Marriage Act r/w Section 7 of

the Family Courts Court which are pending on the file of Family Court, Pune. By this Application, Applicant-wife has sought transfer of said divorce proceedings and Domestic Violence Act proceedings being DV Petition No. 5410/2018 pending on the file of Magistrate's Court, Pune to Family Court, Bandra, Mumbai.

4) So as to establish the claim of hardship in support of prayer for transfer, learned counsel for the Applicant Ms. Ishika D. Tolani would urge that it is settled position of law that the convenience of the wife is required to be appreciated while dealing with the claim under Section 24 of Code of Civil Procedure, 1908 seeking transfer. According to her, Applicant-wife is having medical issue because of which she was required to shift to Mumbai where she has started residing at Ville Parle. It is further claimed that travel time between Pune and Mumbai is around three and half hours and she will suffer hardship if she is made to travel to attend the proceedings at Pune.

5) Learned counsel for the Applicant has drawn support from the Judgment of this Court in the matter of **Anita Balkrishna Barge V/s. Balkrishna Sopan Barge**¹, Judgment of Calcutta High Court in the

¹ 2011(1) Mh.L.J.

matter of **Sanchayita Deb (Guha) V/s. Susanta Deb²** and Judgment of Rajasthan High Court Bench at Jaipur in the matter of **Smt. Ekta Dhadich w/o. Sh. Rajendra Prasad Sharma D/o Giriraj Mishra Vs. Rajendra Prasad Sharma S/o Ghanshyam Sharma³**

6) While countering the aforesaid submissions, learned counsel for Respondent Ms. Yashashree Munde would oppose the prayer and submits that it is by choice, Applicant-Wife has initiated Domestic Violence Act proceedings at Magistrate's Court, Pune. According to her, perusal of Application would reveal that same is based on cause of action accrued within the territorial jurisdiction and place of residence of Applicant. According to her, It is always open for the Applicant-Wife to seek travel expenses and if required non-Applicant is willing to pay travel expenses which prayer if so moved can be considered.

7) I have appreciated aforesaid submissions.

8) Present Applicant-Wife has initiated Domestic Violence Act proceedings being M. A. No. 7/2019 in the Court of Judicial Magistrate First Class, Pune. Said proceedings are based on fact that

² CO. No. 3963 of 2018

CO. No. 3964 of 2018

³ S. B. Civil Transfer Application No. 72/2021

Applicant was residing at Pune and cause narrated in the said proceedings.

9) It appears that in the said background, present non-Applicant initiated proceedings at Family Court, Pune for grant of divorce.

10) The claim put forth by the Applicant-Wife that now she has shifted to Mumbai because of the violent behaviour of the Non-Applicant Husband if appreciated, the fact remains that way back on 26/04/2019, C.R. No. 160/2019 is informed to be registered against the non-Applicant at Koregaon Park Police Station, Pune. The fact remains that non-Applicant was arrested in the said case. Prima facie said fact demonstrates that police have initiated action against the non-Applicant at Pune based on criminal complaint of Applicant. As far as ailment of the Applicant-Wife is concerned, I hardly see any convincing reason in the light of nature of ailment sought to be demonstrated so as to infer ground of hardship in her favour.

11) The fact remains that Applicant-Wife is unable to demonstrate, what prompted her to shift to Mumbai but for claim that non-Applicant forced her to leave her house at Pune. Rather even thereafter, Applicants appears to have continued her place of

residence at Pune. Apart from above, it is also not clear as to whether she is receiving any maintenance as proceedings to that effect are claimed to have been pending in Family Court, Bandra, Mumbai which are initiated late in point of time.

12) In the aforesaid background, the claim put forth on medical ground and the distance between Pune and Mumbai, proceedings need to be transferred to Family Court, Bandra, cannot be granted.

13) It is worth to mention here that there is much better connectivity inter-se between Mumbai and Pune and Applicant-Wife can always seek travel and out of pocket expenses for attending the proceedings at Pune, if so desired. If any such prayer is moved, same is directed to be considered in accordance with law.

14) In the aforesaid background, in my opinion, no case for transfer is made out. Application as such, stands rejected.

[NITIN W. SAMBRE, J.]

IRESH
SIDDHARAM
MASHAL

Digitally signed
by IRESH
SIDDHARAM
MASHAL
Date:
2022.02.28
11:42:43
+0530