

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
MISC. CIVIL APPLICATION NO. 18 OF 2022

Mrs. Anmol Nimish Ahire .. Applicant
Versus
Mr. Nimish Gautam Ahire .. Respondent

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Mr. Akshay Bankapur a/w. Mrs. Monika Kale, Advocates for Applicant.
Mr. Jitendra B. Mishra, Advocate for Respondent.

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CORAM : MILIND N. JADHAV, J.
DATE : 23rd November, 2022.

P.C.:

. Heard.

2. Respondent has filed his Affidavit-in-reply to oppose the Application.

3. Parties got married on 29.12.2019. Respondent – husband initiated proceedings for dissolution of marriage / divorce pending on the file of Family Court, Bandra of which transfer is sought by Applicant to Family Court, Nashik, where she resides with her retired mother.

4. Perused the grounds of hardship which are pressed by Applicant in paragraph No. IV of the Application. As Applicant – wife will be required to travel from Nashik to Bandra to attend the proceedings, it will cause prejudice and hardship to her.

5. Mr. Mishra, learned Advocate for Respondent has vehemently opposed grant of the relief of “transfer” of proceedings on

the ground that Applicant is working in Nashik. That she is highly qualified and has studied upto B.E. and can travel on her own. That her mother is a retired Asstt. Sub-Inspector and Respondent is ready and willing to reimburse all costs and expenses for travel to Mumbai on the dates of hearing. He has relied upon the following decisions in support of his propositions:-

(i) *Preeti Sharma Vs. Manjit Sharma*¹;

(ii) *Amruta Ravi Gajdhane Vs. Ravi Subhash Gajdhane*².

5.1. He therefore submitted that the Application be dismissed. Admittedly Respondent is in private service.

6. 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.

7. 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.

8. It is undisputed that the Applicant - wife is living with the mother and she is not working though it is argued that she has completed her B.E. The distance between Nashik to Bandra is approximately 150 kms.

9. The cardinal principle for exercise of power under Section

1 (2005) 11 SCC 535

2 2022 SCC Online Bom 3926

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***,³ 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

3 AIR 2008 SC 1333

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?"

11. In the present case if the Applicant - wife is forced to go from Nashik to Bandra, Mumbai, 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 Family Court Bandra to Family Court Nashik.

12. In view of the above, in my opinion, ground of hardship has to be considered in favour of the Applicant, as one way distance between Nashik and Bandra is 150 kilometers.

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

"(i) The Hon'ble Court, by suitable order, be pleased to transfer the Divorce Petition bearing Petition No. A 2233/2020 filed in the Family Court No.6, Bandra, Mumbai by the Respondent to the Family Court, Nashik-Road, at Nashik."

[MILIND N. JADHAV, J.]