

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 3199 OF 2023

IN MISCELLANEOUS CIVIL APPLICATION NO. 323 OF 2022

Pankaj Madhavrao Deshmukh,
Age : 36 years, Occ. : Nil,
R/o. : Plot No. 7, Ugandhar, Jankakpuri
Colony, Garkheda Parisar, Aurangabad,
Tq. & Dist. Aurangabad

... APPLICANT
(Ori. Respondent)

VERSUS

Divyanksha Pankaj Deshmukh,
Age : 27 years, Occ. : Household,
R/o. : Barul, Tq. Kandhar, Dist. Nanded

... RESPONDENT
(Ori. Applicant)

WITH

MISCELLANEOUS CIVIL APPLICATION NO. 101 OF 2023

Pankaj Madhavrao Deshmukh,
Age : 36 years, Occ. : Nil,
R/o. : Plot No. 7, Ugandhar, Jankakpuri
Colony, Garkheda Parisar, Aurangabad,
Tq. & Dist. Aurangabad

... APPLICANT

VERSUS

Divyanksha Pankaj Deshmukh,
Age : 27 years, Occ. : Household,
R/o. : Barul, Tq. Kandhar, Dist. Nanded

... RESPONDENT

...

Mr. Hemant Surve – Advocate for Applicant
Mr. S.S. Deshmukh – Advocate for Respondent

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CORAM : SANDIPKUMAR C. MORE, J.

DATE : 20th July, 2023

ORDER :

1. Since both these applications are filed by the applicant – Pankaj Madhavrao Deshmukh against his wife Divyanksha Pankaj Deshmukh, I have decided to dispose the same under a common order.

2. Civil Application No. 3199 of 2023 is filed by the applicant for recalling of order dated 17th February, 2023 passed by this Court in Miscellaneous Civil Application No. 323 of 2022 whereby the divorce proceeding filed by him in Family Court, Aurangabad was transferred to the Court of Civil Judge Senior Division, Kandhar, Dist. Nanded. Whereas the Miscellaneous Civil Application No. 101 of 2023 is filed by the applicant – husband to transfer all the proceedings filed by respondent – wife at Nanded to the Family Court, Aurangabad.

3. According to applicant, his marriage was solemnized with respondent – wife on 26th December, 2018 and out of the said wedlock respondent gave birth to son, Riyansh on 1st February, 2020, who is still residing with him only. Further, it is contended by the applicant that after marriage it was revealed that, the

respondent is suffering from mental ailment and therefore he finally instituted a Divorce Petition in Family Court at Aurangabad. The respondent though appeared in the said proceeding but subsequently tried to commit the suicide. Moreover, when she was discharged from the hospital she went back to the Bhokar and then filed an application for getting custody of minor son on 1st October, 2022. Subsequently she also filed a petition for restitution of conjugal rights on 6th October, 2022 and proceedings under Section 12 of the Protection of Women from Domestic Violence Act, 2005 on 20th October, 2022 against the applicant as a counter blast to the Divorce Petition filed by him.

4. Learned Counsel for applicant submits that, the respondent – wife on her own deserted the applicant and minor son, Riyansh. Moreover, in her application bearing Miscellaneous Civil Application No. 323 of 2022, she did not mentioned anything about the son, Riyansh being with the applicant. Therefore, he further submits that the applicant is now looking after his old aged parents as well as minor son and in such circumstances, if he is compelled to attend the dates at Nanded in the proceedings filed by the respondent, the welfare of minor will be affected. According

to him, applicant is ready to pay travelling charges in case respondent – wife attends the dates at Aurangabad after transfer of all the proceedings as claimed.

5. On the contrary, learned Counsel for the respondent – wife strongly opposed the submissions made on behalf of the applicant – husband and contended that, this Court rightly transferred the Divorce Petition filed by the applicant – husband under order dated 17th February, 2023, by specifically observing that the present applicant despite service through R.P.A.D. remained absent. He further pointed out that, the respondent – wife is not having any independent source of income and there are parents of applicant – husband to look after the minor son, Riyansh at the time of attending the dates by the applicant at Nanded in the proceedings filed by the respondent – wife.

6. Admittedly, this Court has allowed the Miscellaneous Civil Application No. 323 of 2022 and ordered that, the Divorce Petition filed by the applicant – husband be transferred to the Court of Civil Judge Senior Division, Kandhar, Dist. Nanded.

7. Learned Counsel appearing for the applicant has relied upon

following judgments :

- (i) Hon'ble Supreme Court in the case of ***Vijay Kumar Prasad Vs. State of Bihar and Ors.***, in Criminal Appeal No. 431 of 2004 [arising out of S.L.P. (Cri.) No. 3151 of 2003]
- (ii) Andhra Pradesh High Court in the case of ***Annavarapu Dhanaraj Vs. Smt. Annavarapu Manikyam and Ors.***, in Tr. C.M.P. No. 256 of 2011
- (iii) Madhya Pradesh High Court in the case of ***Smt. Aastha Shrivastav Vs. Mohit Shrivastava*** in M.C.C. No. 2565 of 2019
- (iv) Delhi High Court in the case of ***Smt. Sarita Joshi Vs. Ravindra Bhushan Joshi*** in TR.P.© 33 of 2021

8. Learned Counsel for the respondent has relied upon following judgments :

- (v) Hon'ble Supreme Court in the case of ***Mona Aresh Goel Vs. Aresh Satya Goel*** reported in (2000) 9 SCC 255
- (vi) Hon'ble Supreme Court in the case of ***Rajani Kishor Pardeshi Vs. Kishor Babulal Pardeshi*** reported in (2005) 12 SCC 237
- (vii) Hon'ble Supreme Court in the case of ***Anjali Ashok Sadhwani Vs. Ashok Kishinchand Sadhwani*** reported in (2009) 16 SCC 188
- (viii) Bombay High Court (Aurangabad Bench) in the case of ***Sheetal Pankaj Patil (Shirke) Vs. Pankaj Himmatrao Patil (Shirke)*** reported in 2021(3) AIR Bom. R 575
- (ix) Hon'ble Supreme Court in case of ***N.C.V. Aishwarya Vs. A.S. Saravana Karthik Sha*** reported in 2022 LiveLaw (SC)627

(x) Bombay High Court in the case of **Arundhati Devendra Pathak Vs. Devendra Niteen Phatak** in *Miscellaneous Civil Application No. 518 of 2022*

9. It is significant to note that, though there are judgments cited by learned Counsel for the applicant that, the convenience of wife cannot be seen every-time but transfer of application under Section 24 of the Civil Procedure Code needs to be decided in the light of facts of each case. Even in the judgments cited by the learned Counsel for the applicant in the case of **Smt. Sarita Joshi** (*supra*), the Delhi High Court has made following observations :

The exercise of the jurisdiction while transferring the petition particularly in the matrimonial disputes, has to be undertaken in such a manner that there should not be any inconvenience caused to either of the parties. It is a settled practice that in such matters, the convenience of the wife has to be seen more. The request of the petitioner-wife can be declined only if there are weighty reasons behind the same.

10. Thus it has been made clear that, the request of wife to transfer the case can be refused only if there are certain weighty reasons on record. In the instant case, it is significant to note that the respondent – wife is not having any independent source of income and the distance between Nanded and Aurangabad is around 300 Kilometers. Therefore, it would be difficult for

respondent – wife to attend the dates at Aurangabad especially, when the applicant on his own did not provide her any maintenance amount. On the contrary, it seems that, the respondent – wife is asking for maintenance by filing the proceeding under Section 125 of the Criminal Procedure Code before the concerned Judicial Magistrate First Class at Kandhar. Moreover, she has also filed Marriage Petition before the Court of Civil Judge Senior Division, Kandhar for restitution of conjugal rights along-with the other proceedings for getting custody of child and proceeding under the Protection of Women from Domestic Violence Act before the concerned Courts' at Kandhar, Dist. Nanded. It is also settled that, when the different proceedings between same parties are pending in different Court's then it is always advisable that all such proceedings being filed on the similar set of facts are to be decided by one and the same Court.

11. As such, the petition for restitution of conjugal rights filed by the respondent – wife at Kandhar, Dist. Nanded needs to be decided along-with the Divorce Petition filed by the applicant – husband. Thus, considering convenience of the wife all these proceedings going on between the rival parties needs to be decided

in the concerned Courts' at Nanded district only. Therefore, following order is passed :

ORDER

(A) Both applications viz. Civil Application No. 3199 of 2023 in Miscellaneous Civil Application No. 323 of 2022 and Miscellaneous Civil Application No. 101 of 2023 are dismissed and disposed of.

(SANDIPKUMAR C. MORE)
JUDGE

LATER ON

12. Learned Counsel for the applicant – husband in both these applications submits that, he intends to challenge the instant order before the superior authority. Learned Counsel for the respondent – wife strongly objected for the same, since these applications are decided on merit. However, considering the statutory right of the applicant, the interim relief granted vide order dated 23rd June, 2023 is continued till further period of four weeks.

(SANDIPKUMAR C. MORE)
JUDGE