



Aparna Nitin Kale	...	Applicant
Vs.		
Nitin Masaji Kale	...	Respondent

Ms. Sheetal Mhatre, Advocate for the Respondent.

CORAM : ABHAY AHUJA, J.
RESERVED ON : 29 AUGUST, 2023.
PRONOUNCED ON : 06 SEPTEMBER, 2023.

JUDGMENT :

1. This application has been filed by the Applicant-wife under Section 24 of the Code of Civil Procedure, 1908 (CPC) seeking transfer of the proceedings bearing Divorce Petition No. A-826 of 2019 filed by the Respondent-husband for dissolution of marriage pending before the Learned Family Court, Court No. 5, Pune to the Court of Learned Civil Judge Senior Division at Khed, Taluka-Khed, District Pune.

2. Mr. Shivraj Kunchage, learned counsel for the Applicant, would submit that the marriage between the Applicant and the Respondent was solemnized on 20th January 2017 at Govind Garden, Someshwar Corner, Survey No. 17, Baner Road, Near Rajwada Hotel, Pune as per Hindu rites and rituals. Out of the said wedlock, the Applicant and Respondent had begotten one daughter, who is now 5 years old.

3. The learned counsel for the Applicant submits that after few days of marriage, matrimonial differences arose between the husband and wife. That, the Respondent and his family accused the Applicant for each and everything and used offensive language against her, made financial demands from the applicant's family and on being unable to pay the demanded amount, the Respondent and his father beat/assaulted the Applicant and threw the Applicant along with her daughter Trisha out of the matrimonial home due to which she was forced to stay with her parents at Village- Kalamb, Tal.- Ambegaon, Dist.- Pune.

4. The learned counsel would submit that thereafter, the Respondent-husband filed Divorce Petition bearing No. A-826 of 2019 before the Learned Family Court, Pune for dissolution of marriage on the grounds of cruelty and has made various baseless allegations on the Applicant. That, the Respondent, with a malafide intention and ulterior motive to harass the Applicant and her daughter, has filed one more application below Exhibit 37 in P. A. No. 826 of 2019 for access to daughter Trisha. The learned Court has allowed the said application vide order dated 23rd January 2023 and passed the following order:-

“1.The application Exh.37 is partly allowed.

2. The petitioner-husband is permitted to meet the daughter Trisha on every 3rd Saturday of every month from 11:00 am to 2:00 pm at Child Care Center, Family Court, Pune and for that pay the traveling expenses Rs.1000/- to the respondent-wife whenever will come to giving access.”

5. The learned counsel for the Applicant would submit that the Applicant is presently residing with her parents at Village Kalamb, Taluka Ambegaon, District Pune and that she has no source of income of her own. The learned counsel also submits that the Applicant on every date of hearing before the learned Family

Court at Pune has to travel from Kalamb to Pune along with her 5 year old daughter as there is no one at her parents' home to take care of the minor daughter. The Applicant is also required to take care of her ailing parents. Learned Counsel submits that the health of Applicant is also not good as she is emotionally depressed due to the baseless allegations made by the Respondent in Divorce Petition against her. The learned counsel submits that the distance from Kalamb to Pune is around 80 kms one way and she does not have anyone to accompany her during such travel. The learned counsel for the Applicant would submit that it is causing huge inconvenience to the Applicant to travel to Pune from Village Kalamb to attend the Court proceedings. The learned counsel would submit that therefore, it is not only inconvenient for the Applicant to travel to Pune but also it is causing undue hardship to her every time the matter is listed at Family Court, Pune. The learned counsel would submit that the Applicant has filed an Application under Section 125 of Code of Criminal Procedure (Cr.P.C.) bearing Criminal Miscellaneous Application No. 70 of 2020 for maintenance before the learned Magistrate Court at

Ghodegaon, Taluka Ambegaon, District Pune. That, Respondent has several sources of income from different businesses and he would have no difficulty in travelling to Khed. Therefore, learned counsel for the Applicant urges this Court that the proceedings bearing Divorce Petition No. A-826 of 2019 pending before the learned Family Court, Court No. 5, Pune be transferred to the Court of learned Civil Judge Senior Division at Khed, Taluka Khed, District Pune.

6. In the reply filed to the application, the Respondent has denied all of this. Ms. Sheetal Mhatre, learned counsel for the Respondent husband, would submit that despite the Family Court Counselor having made multiple efforts to amicably settle the matter, the efforts have not borne any fruits till now. The learned counsel submits that the Applicant always ill-treated the Respondent and his family members and left the matrimonial home on her own without any intimation or reason. It is further submitted that the Applicant, during her stay at the matrimonial home, demanded many things like money, flat etc. and upon not

satisfying such demands, the Applicant would threaten the Respondent that she would kill the daughter and commit suicide. The Respondent, in the reply, has also stated that the applicant used to visit her father's house to perform black magic. Due to this threat, Respondent was out of home from Pune for 5 days without informing anyone. Therefore, the parents of the Respondent filed a missing complaint. The learned counsel would further submit that the Applicant was undergoing psychiatric treatment at J. J. Hospital and the same is on record in the learned Family Court. That Applicant has, after 8 months of the Divorce Petition being filed at Family Court, Pune, filed FIR No. 76 of 2020 on 5th March 2020 under Section 498-A, 323, 504, 506 & 34 of the Indian Penal Code, 1860 (IPC) at Manchar Police Station against the Respondent, his father, his mother and his sister. The learned counsel would submit that the Applicant has misused the provisions of Section 498-A of the IPC only to harass and threaten the family of the Respondent.

7. The learned counsel for the Respondent would further

submit that the order for maintenance under Section 125 of Cr.PC. dated 2nd December 2020 is passed by the learned Magistrate Court, Ghodegaon wherein the learned Court has directed the Respondent to pay the amount of Rs. 2,500/- as maintenance towards the Applicant and Rs. 1,500/- towards the daughter. It is further submitted that there has been no default at any time by the Respondent in payment of the maintenance towards both the Applicant as well as the daughter and the Respondent is also taking care of the entire educational expenses of his daughter. The learned counsel would submit that Applicant has completed her Masters Degree post marriage with the financial assistance from the Respondent and is a Qualified Teacher. The learned counsel would further submit that the Applicant never followed the order of visitation rights granted to the Respondent by order dated 23rd January, 2023 passed by the learned Family Court which directed the Applicant to give access of the daughter to the Respondent. The learned Court, during the Covid-19 pandemic, had allowed video – conferencing, however, the Applicant every time avoided the call on some or other pretext and was never

allowed to interact with his daughter. The Applicant also denied the access to the Respondent on the daughter's birthday. The learned counsel would further submit that the travel distance from the present place of residence of the Applicant to the Family Court at Pune is less than 2 hrs of commute. Therefore, no hardship will be caused to the Applicant to travel. Learned counsel would also submit that the Respondent is ready and willing to pay the entire travelling expenses in advance and will also bear the accommodation expenses, if required. The learned counsel would submit that the Applicants only purpose behind filing this application is to delay the proceedings and to harass the Respondent. Therefore, the learned counsel submits that this application be dismissed.

8. I have heard Mr. Shivraj Kunchage, learned counsel for Applicant and Ms. Sheetal Mhatre, learned counsel for Respondent at length and with their assistance also perused the application and the reply and considered the rival contentions.

9. This is a case where the marriage between the Applicant-wife and the Respondent-husband was solemnized on 20th January, 2017 as per Hindu rites and rituals. There are allegations that after few days of marriage, the Respondent and his family accused the applicant and used offensive language against her, that the Respondent made financial demands from the Applicants family, assaulted the Applicant and finally the applicant was asked to leave the matrimonial home due to which she and her daughter have been compelled to stay with her parents at Village-Kalamb, Tal.- Ambegaon, Dist.- Pune. That the Respondent has denied the above and submitted that the Respondent has herself left the matrimonial home and has also threatened to kill herself and the child therefore the Respondent-husband filed a Divorce Petition bearing A-826 of 2019 for dissolution of marriage on the grounds of cruelty at Family Court, Pune.

10. It appears that the Applicant has no source of income of her own as the Applicant is unemployed and dependent on her parents for financial assistance. It also appears that the Applicant

does not have anyone to accompany her from Kalamb when the matter is listed at the Family Court, Pune which is at least 70 kms from Kalamb. As noted above, it would also be inconvenient to take her 5 year old school going daughter along with her during every date of hearing when the matter is listed in Family Court Pune. There would also be no one to look after her daughter if she has to travel to Pune on every date. Besides the daughter needs to be taken care of by mother if that is denied it would definitely cause inconvenience and hardship to the Applicant. Therefore, even if travelling and boarding/lodging expenses are paid for by the husband, that would be immaterial considering the hardship caused to the Applicant-wife. On the other hand, it appears that the Respondent is financially sound and can afford travelling to the court at Khed.

11. It is settled law that while considering the application for transfer under Section 24 of CPC filed by a wife, the convenience of the wife and hardship caused to the wife has to be of paramount consideration and wife's hardship and inconvenience

has to be preferred over that of the husband.

12. The Hon'ble Supreme Court in the case of **N.C.V. Aishwarya Vs. A.S. Saravana Karthik Sha, SCC Online SC 1199 (2022)** has highlighted this very aspect considering the Indian socio-economic paradigm. Paragraph No. 9 of the said decision is usefully quoted as under :-

“9. The cardinal principle for exercise of power under Section 24 of the Code of Civil Procedure is that the ends of justice should demand the transfer of the suit, appeal or other proceeding. In matrimonial matters, wherever Courts are called upon to consider the plea of transfer, the Courts have to take into consideration the economic soundness of both the parties, the social strata of the spouses and their behavioral pattern, their standard of life prior to the marriage and subsequent thereto and the circumstances of both the parties in eking out their livelihood and under whose protective umbrella they are seeking their sustenance to like. Given the prevailing socio-economic paradigm in the Indian society, generally, it is the wife's convenience which must be looked at while considering transfer.”

(Emphasis Supplied)

13. In the above circumstances the application deserves to be allowed and is made absolute in terms of prayer clause (A) which reads thus :-

“That, this Hon’ble Court as per Section 24 of the Civil Procedure Code r/w Rule 6 of Chapter I of the Bombay Appellate Side Rules, 1960 a/w Article 227 of Constitution of India, be pleased to transfer the proceedings bearing Divorce Petition No. A-826/2019 pending before the Ld. Family Court, Court No. 5, Pune to the file of Ld. Civil Judge, Senior Division at Khed, Tal.- Khed, Dist.- Pune.”

14. The application stands allowed in the above terms. Parties to bear their own costs.

15. It is made clear that any observations on the merits of the dispute between the parties is only to consider this application which shall not influence the trial or disposal of the Marriage Petition which is to be tried and decided on its own merits uninfluenced by the said observations.

(ABHAY AHUJA, J.)