



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISCELLANEOUS CIVIL APPLICATION NO. 227 OF 2022

Smt. Priyanka Patro
Age:- 29 years, Occ. Service
Residing at Flat No. 604,
6th Floor, Kamalraj Balaji Residency,
Sai Park Road, Dighi, Pune,
Maharashtra – 411015

... Applicant

Vs.

Shri Arvind Rajasekar
Age :- 32 years, Occ. Service
Residing at B-104, Rajpark,
Rajaji Path, Near Madhavi,
Bungalow, Dombivli 421201,
District-Thane.Respondent

... Respondent

Mr.Harshad Rathod, Advocate for the Applicant.

Mr.Arjun Jeswani with Mr.Rajan S. Pawar, Advocates for the Respondent.

CORAM : ABHAY AHUJA, J.
DATE : 06 OCTOBER, 2023.

ORAL JUDGMENT :

1. When the matter is called out, Mr.Arjun Jeswani, learned counsel appears for the Respondent and informs that mediation has failed. Perusal of the record indicates that there is a sealed cover. The learned Sheristedar has opened the sealed cover, which contains the mediation report dated 3rd October, 2023. A perusal of the same indicates that the mediation has failed. The said report is shared with the learned counsel for the parties, and after their perusal, it is taken on record and marked “X” for the purposes of identification.

2. The learned counsel submit that they are ready to proceed with the matter.

3. This is an application seeking transfer of divorce proceedings filed by the Applicant before the Court of Civil Judge, Senior Division, Kalyan to the Court of Civil Judge Senior Division, Pune.

4. Mr.Harshad Rathod, learned counsel for the Applicant would submit that the marriage between the Applicant and the Respondent was solemnized on 11th July, 2019 in Chembur, Mumbai as per Hindu customs and rituals and thereafter, the couple started residing at Dombivli. It is submitted that around the first week of August, 2019 the Applicant and the Respondent due to their professional work shifted to Pune and continued to reside at Pune at their matrimonial home.

5. It is the case of the Applicant that in or around 16th December, 2021 after man-handling the Applicant, the Respondent left the Applicant and went back to Dombivli for living with his parents.

6. It is submitted that in the circumstances, the Applicant having no other option hired another house at Dighi in Pune to live with her mother.

7. Around 16th April, 2021 , the Applicant has filed a non-cognizable police complaint against the Respondent.

8. On 20th January, 2022 the Respondent filed divorce petition against the Applicant before the Civil Judge, Senior Division, Kalyan.

9. Mr.Harshad Rathod, learned counsel for the Applicant submits that the wife has filed two proceedings in Pune, one is a First Information Report (FIR) *inter-alia* under section 498A of Indian Penal Code and also a domestic violence proceeding in Pune. He would submit that the Applicant is a software professional working with Hexaware Technologies and staying with her mother. Learned counsel would submit that as per company policy, the Applicant opted for work from home as her mother had been suffering from cancer. Learned counsel would submit that although she has now recovered, however, the mother has suffered from cancer twice, once in the year 2014 which was cured in the year 2015 and second time in the year 2020 which has also been cured. However, the mother requires monthly follow-up with the doctor and the Applicant not only takes care of the mother at home but also accompanies her for the follow-up sessions. Learned counsel would submit that Applicant has a younger brother but he is not staying with the Applicant and the mother. Learned counsel would submit that travelling from Pune to Kalyan to and fro is about 300 kilometers and there is no one to accompany the Applicant to Kalyan.

Learned Counsel submits that travel would also cause physical fatigue to the Applicant. Learned counsel would submit that for the Applicant to travel from Pune to Kalyan every time the matter is listed, would not only be inconvenient in the circumstances of the case but also cause undue hardship. He therefore, submits that the divorce proceedings filed by the husband in Kalyan be transferred to the Civil Judge, Senior Division at Pune.

10. Mr.Arjun Jeswani, learned counsel for the Respondent-husband opposes the application. He refers to the reply dated 25th June, 2023. Learned counsel would submit that in fact the mother of the Applicant is fit and fine. Learned counsel draws the attention of this Court to pages 78 and 79 of the reply and submits that these are pictures taken of the mother and the Applicant when they had visited Dombivli to procure the stridhan. Learned counsel would submit that on the other hand the Respondent himself had undergone surgery for kidney stone. He seeks to draw the attention of the Court to page 85 which contains the discharge summary pursuant to the said operation. Learned counsel would submit that even the mother of the Respondent, who is a key witness, has several health issues and has been advised not to travel on medical grounds. Learned counsel draws the attention of this court to page 80 which contains the mother's discharge summary. Learned counsel submit that even the father has been advised not to travel. He would submit that both the mother and the father who would be witnesses in the case have been advised not to

travel. They are fully dependant on the Respondent for their physical needs, and additionally the Respondent also has to take care of his mentally challenged aunt who is staying with them. Learned counsel would submit that though the Respondent is employed with Accenture but Accenture has no policy of work from home and the company is also in the process of laying off people. He would submit that if three times in a month the Respondent has to take leave to travel to Pune, then the company may lay off the Respondent thereby taking away his source of livelihood. Learned counsel also submits that the salary earned by the Applicant is much more than that earned by the Respondent. He submits that the salary earned by the Applicant is over Rs.93,000/- per month, whereas Respondent earns Rs.80,000/- per month. Therefore, it would not only be more inconvenient for the husband to travel to Pune if the proceedings are transferred to Pune but also cause greater hardship. Learned counsel therefore, submits that the Application be rejected.

11. I have heard the learned counsel and also given my anxious consideration to the rival contentions.

12. The Hon'ble Supreme court in the case of **N.C.V. Aishwarya Vs. A.S. Saravana Karthik Sha**¹ has emphasized that while considering transfer under section 24 of the Code of Civil Procedure, 1908 (CPC), it is the wife's

1 SCC Online SC 1199 (2022)

convenience that has to be looked at. In Paragraph No.9 of the said decision, it was observed 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 case of **Rajani Kishor Pardeshi Vs. Kishor Babulal Pardeshi**,² the Hon’ble Supreme Court, has while considering the comparative inconvenience of the husband and wife observed that it is the convenience of the wife that has to be given preference over the convenience of the husband. Paragraphs No. 3 and 4 are usefully quoted as under :-

“3. The husband opposes the transfer on the ground that it is equally inconvenient for him to go to Satana and that he is willing to pay the expenses for her travel to Mumbai.

4. In this type of matter, the convenience of the wife is to be preferred over the convenience of the husband. Hindu Marriage Petition No.6 of 2004, Kishor Babulal Pardeshi v. Rajani Kishor Pardeshi pending before the Court of Civil Judge, Senior Division at Panvel, Mumbai, Maharashtra is transferred to the

2 2005 (12) SCC 237

Family Court of proper jurisdiction at Satana, Madhya Pradesh.”
(Emphasis Supplied)

14. This is a case where both the Applicant and the Respondent are employed with multinational companies. Husband is living at Dombivli and the wife is living at Pune. As can be seen, the Applicant is working from home and living with her mother at Pune. It is not in dispute that the mother had suffered from cancer twice and requires care and regular follow-up. The Applicant is working in a multinational but has availed of the option to work from home so that she can take care of her mother as well as earn her livelihood. Though the Applicant has a brother but it is submitted that the brother is not staying with the Applicant and it is the Applicant and her mother who are staying together. There are already two proceedings which are filed in Pune. If the Applicant has to travel from Pune to Kalyan to attend to the divorce proceedings, she would have to leave her mother alone. It would also not be advisable for the mother due to her weak health after having twice been afflicted with cancer to accompany her daughter during the travel from Pune to Kalyan. There is no one in the family to accompany the Applicant to Kalyan on dates when the matter is listed there. Just because the mother and the daughter had visited Dombivli to procure the stridhan, it cannot be said that the mother is fit and fine. The reports and prescriptions from Exhibit D to Exhibit H indicate that she had been suffering from cancer and has been advised close follow-up on a monthly basis and this fact has not been disputed on behalf of the Respondent. No doubt the

case of the Respondent also appears to be compelling as he has to take care of his parents with age related issues as well as a mentally challenged aunt in addition to managing his own health having undergone a surgery for kidney stone. However, in view of the principle laid down by the Hon'ble Supreme Court in the case of **Rajani Kishor Pardeshi Vs. Kishor Babulal Pardeshi (supra)** where it has been held that convenience of the wife has to be preferred over the convenience of the husband, this Court is of the view that the divorce petition filed by the husband in the Court at Kalyan be transferred to the Court at Pune.

15. In this view of the matter, the application is made absolute in terms of prayer clause (a) which reads thus :-

“(a) That this Hon'ble Court may be pleased to transfer the record and proceedings of the case being Marriage Petition no. 123 of 2022 pending before the Ld. Civil Judge Senior Division at Kalyan to Ld. Civil Judge, Senior Division Pune at Pune.”

16. However, considering the health condition of the Respondent as well as his responsibilities towards his parents and aunt as well as his service to his employer, this Court permits the Respondent-husband to attend the proceedings in the Court at Pune through video conferencing on dates where his physical presence in the Court at Pune is not necessary. The Respondent to seek permission from the Court at Pune in order to appear through video conferencing facility on dates when his physical presence is not required.

17. It is made clear that any observation(s) 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 subject Marriage Petition which is to be tried and decided on its own merits uninfluenced by the said observation(s).

(ABHAY AHUJA, J.)