



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

MISCELLANEOUS CIVIL APPLICATION NO. 167 OF 2023

Devika Dhiraj Patil

Nee Devika Jayprakash Buttepatil

..... Applicant

VERSUS

Dhiraj Sunil Patil

..... Respondent

Mr. H.P.Vyas a/w. Mr.Chandrashekhar Yadav for the Applicant.

Ms.Varsha Pichaya a/w. Mr.Sachin Padaye for the Respondent.

CORAM: ABHAY AHUJA, J.

DATE : 8th SEPTEMBER, 2023

ORAL JUDGMENT

This is an application filed by the applicant wife under section 24 of the Code of Civil Procedure, 1908 (CPC) seeking transfer of the divorce proceedings filed by the respondent husband before the Family Court at Nashik to the Family Court at Pune.

2. Mr.Hitesh Vyas, the learned counsel would submit that earlier the marriage between the applicant and the respondent was solemnized on 21st February, 2019 at Nashik as per Hindu Vedic Rites and Rituals and the marriage has also been registered. Learned counsel would submit that there is no issue born out of the said wedlock. He would submit

that on 29th of October, 2022, which is almost 3 and a half years after the marriage, due to matrimonial discord and differences of opinion, the applicant was compelled to leave the matrimonial home. The applicant was dropped by the respondent at the applicant's parents' house at Pune in his car. It is submitted that while dropping the applicant, the respondent had assured her that he would bring her back within a week. The applicant believing in the said promise given by the respondent came to stay in Pune with her parents.

3. That on 23rd of February, 2023, the respondent husband filed a petition for dissolution of the marriage under section 13 (i) (a) of the Hindu Marriage Act, 1955 before the Family Court at Nashik, of which, learned counsel submits, the applicant had no knowledge. Learned counsel submits that it is only on the 6th of April, 2023 when the cousin brother of the respondent came to Pune bringing the KIA car and some of the articles, ornaments and belongings of the applicant, when the respondent informed the father of the applicant that the respondent had filed a petition for divorce against the applicant before the Family Court, Nashik and that the applicant would receive summons in due course of time. Learned counsel would submit that thereafter the applicant through her advocate issued a notice dated 18th April, 2023 to the respondent alleging matrimonial wrongs on the

respondent and stating that she was entitled to a decree of divorce from the respondent. That if the respondent wanted to resolve the issues amicably, the applicant would be willing to seek a decree of divorce by mutual consent upon conditions including permanent maintenance of Rs.1 crore. That by communication dated 6th May, 2023, the respondent replied to the said notice through his advocate. Learned counsel would submit that since, after getting the knowledge of the filing of the petition by the respondent, number of months had elapsed and the applicant had not received service of summons with respect to the divorce petition filed in Nashik, the applicant travelled to Nashik on 7th June, 2023 for verifying the same, after which she has received copy of the divorce petition.

4. Learned counsel would submit that the applicant is a lady litigant and cannot travel alone for the purpose of conducting the matter in Nashik since she is staying with her parents at Pune. Learned counsel submits that the applicant will require a male person to escort her from Pune to Nashik for the purpose of conducting the said petition and there is no other male member except her father who has recently undergone an eye surgery and is on medication and also that the doctors have advised fissure and piles surgery to him and therefore the father who is aged cannot accompany her. Learned counsel would

submit that it is settled law that in matters of transfer under section 24 of the CPC, the convenience of the wife has to be considered. Referring to reply of the respondent husband, learned counsel would submit that the reference to the income tax returns filed by the applicant and her share in two partnership firms cannot be considered as an independent source of her income in as much as the said investments were made by her father and the applicant was made a partner by him but the business was managed by the father. Learned counsel therefore submits that she does not have her independent source of income and it cannot be said that the applicant has come with unclean hands, even though it is true that the applicant holds a Masters degree from UK.

5. With respect to the allegations of illicit relationship of the applicant with other men, learned counsel would submit that the same are baseless and to be discarded in limine. He would submit that in any event, this Court is only concerned with the convenience and hardship to the wife and the other aspects will be gone into by the concerned Family Court. With respect to the medical condition of the respondent involving panic/anxiety attacks, learned counsel would submit that the documents referred to in the reply are post the filing of the petition and cannot be relied upon. Mr.Vyas would submit that the stage before the

Nashik Court is for appearance of the applicant and it would be in the interests of justice that the Divorce Petition is transferred from Nashik to Pune.

6. On the other hand Mrs. Pichaya, learned counsel for the respondent husband would firstly submit that the ground of inconvenience taken by the applicant is untenable in as much as admittedly she has herself travelled to Nashik on 7th June, 2023 to verify whether the respondent had filed the subject divorce petition or not and therefore to take a plea that she cannot travel alone being a lady is only an excuse. Learned counsel also submits that in fact it would be unsafe for the respondent to travel to Pune if the matter is transferred there, in as much as, since the year 2014, even prior to the marriage of the respondent with the applicant, the respondent has been suffering from panic/anxiety attacks. Learned counsel submits that due to the harassment and mental cruelty from the applicant, the respondent's condition has deteriorated. Learned counsel draws the attention of this Court to a medical prescription at Ex.A to the reply to submit that the respondent is under treatment for panic disorder and he has been advised regular treatment and follow up. That he finds it very difficult to travel alone or with persons with whom anxiety may be triggered. Learned counsel also submits that in fact the applicant is

highly qualified and a business woman being a partner in two realty firms as mentioned in the reply. She would submit that in fact it is the applicant who has committed atrocities on the respondent and therefore the respondent and the applicant have been living separately since 9th of January, 2022 and have not shared relations of husband and wife since then. Learned counsel would submit that as can be seen from the messages annexed to the reply that it is the applicant who has cheated and deceived the respondent. That the applicant has willingly left the matrimonial home due to the illicit relationship with other men. That the applicant is misusing her power as a lady litigant. She would submit that it is due to this reason that the respondent has sent back all the applicant's ornaments, articles and belongings including the KIA car to her after filing the divorce petition at Nashik. Learned counsel would submit that therefore this application be dismissed.

7. I have heard Mr.Hitesh Vyas, learned counsel for the applicant as well as Mrs. Pichaya, learned counsel for the respondent and also considered the rival contentions.

8. It is not in dispute that the applicant and the respondent were married on 21st February, 2019 and are presently not staying together. It is also not in dispute that the respondent husband had filed petition

seeking divorce from the applicant wife on 23rd February, 2023 before the Family Court, Nashik. True that the respondent may have been suffering from panic/anxiety attacks since 2014 and may also be under the treatment, however, it is law settled by the Hon'ble Supreme Court in several decisions, with the most recent one being the case of ***N.C.V. Aishwarya Vs. A.S. Saravana Karthik Sha, SCC Online SC 1199 (2022)*** where the Hon'ble Supreme Court has considering the present day socio-economic paradigm in Indian Society held that it is the wife's convenience which must be looked at while considering transfer.

Paragraph 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 behavioural 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)

9. In the case of ***Rajani Kishor Pardeshi ..V/s.. Kishor Babulal Pardeshi, 2005 (12) SCC 237***, the Hon'ble Apex Court while

considering the argument of the husband opposing the transfer on the ground that it was equally inconvenient for him to go to Satana and that he would be willing to pay the expenses for the wife's travel to Mumbai, the Hon'ble Supreme Court held that in these type of matters, the convenience of the wife would be preferred over the convenience of the husband and accordingly transferred the proceedings pending before Mumbai Court to the Family Court at Satana, Madhya Pradesh.

Paragraphs 3 and 4 of the said decision 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 Family Court of proper jurisdiction at Satana, Madhya Pradesh.”

(Emphasis Supplied)”

10. It has not been disputed by the respondent that the applicant does not have any other male person in her family other than her father to accompany her to Nashik. Even though she may have travelled to Nashik Court on 7th June, 2023 for the purposes of verifying whether

any divorce petition was filed by the respondent, and the applicant though qualified, is dependent on her father. It is not in dispute that her father had undergone an eye surgery and is on medication and also has been advised surgery for fissure and piles and therefore cannot accompany the applicant to travel to Nashik for the purpose of attending the Court there. Therefore even though the applicant may be having some resources to travel to Nashik, however, considering her father's condition of not being able to accompany her due to his health condition is an important factor to be taken into account while considering the convenience of the wife. In a country like India, important decisions such as marriage, divorce are still taken with the guidance and blessings of elders in the family. For a lady to travel alone for the proceedings to a Court where the fate of her marriage is going to be decided without any family member would definitely be a matter of concern and cause not only physical inconvenience but also emotional and psychological inconvenience. The respondent would also no doubt be undergoing panic and anxiety as referred to in the reply, however, as observed by the Hon'ble Supreme Court in case of ***Rajani Kishor Pardeshi*** (supra) that in these type of matters, it is the convenience of the wife that is to be preferred over the convenience of the husband.

11. In this view of the matter, this Court is inclined to allow the application. The application stands allowed in terms of prayer clause

(a) which reads thus :-

(a) That P.A. NO. 124 of 2023 pending before the Hon'ble Family Court, Nashik at Nashik Road, Maharashtra may kindly be transferred to the Hon'ble Family Court Pune at Pune.

12. However, keeping in mind the health condition of the respondent husband, it is made clear that the respondent husband would be at liberty to appear before the Family Court, Pune through video conferencing, upon an application made in that behalf to the said Family Court on dates where his physical presence is not required.

13. 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.]