

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISCELLANEOUS CIVIL APPLICATION NO.208 OF 2023

AMRUTA RAVINDRA AVHAD)...APPLICANT

V/s.

RAVINDRA AVHAD)...RESPONDENT

Ms.Kavita Anchan, Advocate for the Applicant.

None for the Respondent.

CORAM : ABHAY AHUJA, J.

DATE : 1st DECEMBER, 2023

PC. :

1. Today, when the matter is called out, none appears for the Respondent, despite service.

2. Ms.Kavita Anchan, learned Counsel, appointed through legal aid, draws the attention of this Court to order dated 20th October 2023 and submits that this Court had recorded on that date that if none appears for the Respondent on the next date, this Court will proceed to pass appropriate orders. The said order dated 20th October 2023 is quoted as under :

“1. Ms. Anchan, learned Counsel for the Applicant, appointed through legal aid is present and submits that

the service through speed post has been effected on the Respondent. She seeks to tender across the bar affidavit of service dated 2nd August, 2023 in support.

2. The service is in fact complete as the Respondent has been served on 21st July, 2023. The remark column in the cause list indicates that the notice issued to the Respondent was returned unserved with Bailiff remark “not found at the time of service. Respondent residing at Ahmednagar for work purpose, though detailed address not found”.

3. Be that is at may, considering the affidavit of service that has been tendered across the bar by the learned Counsel, it is clear that service to the Respondent is complete. The Respondent is neither present nor represented though served. However, as and by way of last chance to the Respondent, list on 1st December, 2023.

4. It is made clear that if none appears for the Respondent on the next date, this Court will proceed to pass appropriate orders.

5. Ad-interim order granted earlier to continue till the next date.”

3. Accordingly, as none appears for the Respondent even today, this Court proceeds to hear the Application.

4. Ms.Kavita Anchan, learned Counsel for the Applicant, would submit that the Applicant is seeking transfer of Divorce Petition filed by the Respondent-husband before the Court of Civil Judge, Senior Division, Ahmednagar to the Court of Civil Judge, Senior Division, Belapur.

5. Learned Counsel would submit that the marriage between the Applicant and the Respondent was solemnized on 7th May 2006 at Ahmednagar. After marriage, the Applicant started residing with the Respondent and his family at Ahmednagar. It is submitted that the Respondent nor his family informed the Applicant or her family that the Respondent was unemployed and the marriage was conducted based on false promises given to the Applicant and her family. It is submitted that after one month of the marriage, the Respondent and his family started abusing the Applicant on petty issues and also tortured her mentally and physically. That, on 3rd June 2007, the Applicant gave birth to a son and although intermittently the family stayed together, but time and again due to quarrelsome nature of the Respondent and his inability to take care of even the basic needs of the Applicant and their son, the Applicant after an interview process joined as a ward maid (aaya) in K.B.Bhabha Municipal General Hospital at Bandra in 2012 and has thereafter in the year 2018 moved into her new flat with her son at Navi Mumbai. Thereafter, the Applicant also used to visit her matrimonial house at Ahmednagar upto 2019 on every festival and family functions. That, somewhere in September 2019, the Applicant was facing financial crisis as she had to pay equated monthly installments (EMIs) for housing loan, and therefore, there was

deficiency in paying education fees of her son and requested the Respondent to pay for his education fees but instead of helping her in overcoming financial crisis, the Respondent started abusing the Applicant and threatened her to give divorce and went back to Ahmednagar. Thereafter, in April 2022, the Respondent through his Advocate sent a Divorce notice to the Applicant which was replied to by the Applicant's Advocate. Although the Advocates tried to mediate the matter between the parties, however, the same also failed and thereafter proceedings were filed by the Applicant before the Maharashtra State Women Commission at Bandra and she has also obtained free legal service from the legal aid service at Belapur. That, the Applicant has also filed Domestic Violence proceedings in the Belapur Court. That, the Applicant is having medical issues and has undergone surgeries which were done at concessional rates and even the medical expenses have all been borne by her parents. That, the Respondent filed Divorce Petition before the Civil Judge, Senior Division, Ahmednagar on 23rd January 2023 and the Applicant came to know about it after receiving summons and thereafter the Applicant and her Advocate attended the Court on 5th May 2023, although the Respondent and his Advocate were absent. Learned Counsel submits that the Applicant is desirous of seeking restitution of conjugal rights.

6. Ms.Anchan submits that the Applicant has twice undergone surgery in the month of February 2023 and she is not medically fit to travel. That, even her employer has given her light work as she is not physically fit to do her regular work. Learned Counsel submits that due to her medical problem and her financial situation severe hardship would be caused to the Applicant if the Applicant is made to travel from Mumbai to Ahmednagar as the distance between the two cities is 257 kilometers. That, the Medical Certificate at Exhibit L (page 95) clearly advises the Applicant to avoid travel. That, the Applicant is working in a government hospital and the same is not transferable and hence, she cannot travel from Mumbai to Ahmednagar. That, the Applicant does not have any accommodation in Ahmednagar nor can she afford any hotel stay, and therefore, it will not only be inconvenient but also cause hardship to her if she is made to travel from Mumbai to Ahmednagar. Learned Counsel submits that the Applicant and her son have been abandoned by the Respondent in the year 2019 and the Respondent has not given a single farthing to the Applicant and her son, who is 17 years of age and in these compelling circumstances, the Applicant, who is only a Class IV employee, is undergoing severe hardship in earning her livelihood and providing education to her son, and therefore, learned Counsel urges that the Divorce Petition filed by

the Respondent-husband before the Court of Civil Judge Senior Division, Ahmednagar be transferred to Civil Judge Senior Division, Belapur.

7. Learned Counsel submits that already there is a Domestic violence proceeding pending in the Belapur Court for which the Respondent any ways travels and therefore if the Divorce proceedings are transferred to the Belapur Court, that would save the hardship and inconvenience. It is also submitted that the Respondent is holding the post of Assistant Sarpanch in Zilla Parishad, Ahmednagar and earning handsome amount as he also has agricultural farm business of 28 acres in Ahmednagar and therefore no prejudice would be caused to the Respondent if the transfer, as prayed for, is allowed. In such circumstances, learned Counsel requests this Court to allow the Application.

8. Learned Counsel relies upon the decisions of the Hon'ble Supreme in the case of *N.C.V Aishwarya Vs. A.S. Saravana Karthik Sha*¹ and in the case of *Rajani Kishor Pardeshi vs. Kishor Babulal Pardeshi*² in support of her contentions.

1 SCC Online SC 1199 (2022)

2 2005 (12) SCC 237

9. The Respondent has chosen to remain absent, despite service and therefore the allegations and the submissions made in the Application have remain unchallenged.

10. Paragraph 9 of the decision of the Hon'ble Supreme Court in the case of ***N.C.V Aishwarya Vs. A.S. Saravana Karthik Sha (supra)*** 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)

11. In the case of ***Rajani Kishor Pardeshi vs. Kishor Babulal Pardeshi (supra)*** 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 Apex 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)

12. Having heard the learned Counsel and having considered the submissions, this Court is of the view that ends of justice would be met if the Application is allowed and the Divorce proceedings filed before the Court at Ahmednagar are transferred to the Court of Civil Judge Senior Division, Belapur.

13. Accordingly, the Application is allowed in terms of Prayer clause

(a) which reads thus :

“(a) that this Hon’ble Court be pleased to pass an order thereby directing the learned Civil Judge, Senior Division, Ahmednagar to Civil Judge, Senior Division, Belapur to transfer the Marriage Petition No.67 of 2023 to the file of the Civil Judge, Senior Division, Belapur to try, entertain and dispose of the same.”

14. 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 Marriage Petition which is to be tried and decided on its own merits uninfluenced by the said observation(s).

(ABHAY AHUJA, J.)

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