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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

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MISCELLANEOUS CIVIL APPLICATION NO.394 OF 2022

Heena Ateeb Shaikh

...Applicant

V/s.

Shri. Shaikh Ateeb Shaikh Shakil

...Respondent

Ms. Chaitrali Deshmukh for Applicant.

Mr. Miyar Ahmed for Respondent.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 03, 2023

P.C.:

1. The wife has filed a present application seeking the transfer of proceedings pending before the learned Civil Judge, Senior Division, Nandurbar, to the learned Civil Judge, Senior Division, Nashik.

2. The marriage between the applicant and the respondent was performed on 17th November 2018. Due to matrimonial differences between the applicant and the respondent, the applicant has filed Criminal Inquiry Application no.36 of 2022 before the learned Judicial Magistrate, First Class, Nashik Road, Nashik, under Section 12 of the Protection of Women from Domestic Violence Act, 2005. The respondent has also filed Regular Civil Suit No.37 of 2022 before the learned Civil Judge, Senior Division, Nandurbar, under Section 2 of the Muslim Personnel Law, 1937.

The applicant has, therefore, filed a present application seeking the transfer of proceedings pending in Nandurbar to Family Court, Nashik. The reason for transfer pleaded in the application is that the distance between Nandurbar and Nashik is around 292 km. which takes 7 hours for one way journey, and, therefore, it is inconvenient for the applicant to attend proceedings in Nandurbar.

3. The respondent-husband has opposed the application under filing reply, *inter-alia*, it is contended that the Court in Nandurbar, being subordinate to Aurangabad Bench of this Court, Principal Bench has no jurisdiction to entertain the present application. Therefore, such an application should have been filed before the Aurangabad Bench of this Court. It is also pleaded that the application has been filed to harass the husband and it is designed to cause inconvenience to the husband. In support of his submission, the opponent relied on the judgments of the Apex Court in the case of **Nasiruddin Vs. State Transport, Appellate Tribunal**, reported in (1976 AIR 331) and **Smt. Sushma Vs. Vikram Aditya**, reported in (AIR 1988 Allahabad 44).

4. Learned advocate for the applicant in support of her submission submits that the Court in Nandurbar being subordinate to the High Court, this Court has the power to entertain an application under Section 24 of the Code of Civil Procedure, 1908. In support of her contention, she relied on the judgment of the Apex Court in the case of **Sumita Singh Vs. Kumar Sanjay & Anr.**, reported in (2001 (10) SCC 41), **Sangamitra Ramakant Royalwar & Ors. Vs. Ramakant Gangaram Royalwar &**

Ors., reported in (2009 (1) Maharashtra Law Journal 303).

5. To adjudicate the issue as to whether the principal bench can transfer proceedings pending before Court in nandurbar, relevant statutory provisions need to be noted. Section 24 of the Code of Civil Procedure, 1908 read as under:-

“24. General power of transfer and withdrawal.—

(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion without such notice, the High Court or the District Court may at any stage—

(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or

(b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and—

(i) try or dispose of the same; or (ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(iii) retransfer the same for trial or disposal to the Court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn under sub-section (1), the Court which 1[is thereafter to try or dispose of such suit or proceeding] may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

2[(3) For the purposes of this section,—

(a) Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court;

(b) "proceeding" includes a proceeding for the execution of a decree or order.]

(4) The Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small

Causes.

3[(5) A suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it.]"

6. Rule 6 of Chapter 1 of the Bombay High Court, Appellate Court Rules read as under:-

"6. Applications for transfer of proceedings in lower Courts.—All applications for transfer of suits, appeals, criminal cases or other proceedings pending for trial or disposal in any Civil Court or Criminal Court subordinate to the High Court or over which the High Court has the power of superintendence, to another Court subordinate to or under the superintendence of the High Court, or to the High Court may be disposed of by a single Judge."

7. On a conjoint reading of Section 24 along with Rule 5 of Chapter 1, it appears that there is a marked distinction in the language used. The language in Section 24 refers to this Court as the "High Court". Rule 6 of Chapter 1 also contemplates High Court and Court subordinate to High Court. Neither Section 24 nor Rule 6 of Chapter I refers to the Bench of the High Court. The expression used in rule 6 of chapter I is 'High Court' and not a Bench. The subordinate Court contemplated in rule 6 is in relation to 'High Court' are all courts situated within the territorial jurisdiction of the 'High Court'.

8. At this stage, it would be profitable to refer to the judgment of this Court in the case of **Sangamitra Ramakant Royalwar** (supra), wherein it is held that the distinction for the purpose of Section 24 cannot be drawn between the Bench and the High Court. There cannot be a dispute about the preposition of law that the Court at Nandurbar is subordinate to the High Court merely because such Court at Nandurbar is subordinate to the High Court

Bench at Aurangabad. Therefore, it does not preclude Principal Bench from entertaining an application under Section 24 as the cause of action for filing such application under Section 24 of the Code of Civil Procedure, 1908, accrues wherever the wife resides and the place where inconvenience is caused to the wife. According to the averments in the application, undisputedly, the applicant resides in Nashik; therefore, the cause of action in the context of inconvenience to the wife accrues within the territorial jurisdiction of the Principal Bench of this Court.

9. Insofar as Judgment in the case of **Nasiruddin Vs. State Transport, Appellate Tribunal** (supra) is concerned, the said case arose out of proceedings challenging the order passed by the Court. The writ of certiorari was sought in the facts of the case. For the grant of a writ of certiorari, the passing of an order is the cause of action. Therefore, Apex Court, in the facts of the said case, held that the cause of action for invoking writ of certiorari would be deemed to have accrued within the territorial jurisdiction of the concerned Bench. In the facts of the case, as held earlier, the cause of action has accrued within the territorial limits of the Principal Bench. Therefore, in my opinion, the judgment cited on behalf of the opponent does not apply to the facts involved.

10. Insofar as the Judgment in the case of **Smt. Sushma Vs. Vikram Aditya** (supra) is concerned, it appears that the said judgment did not take into consideration provisions of Appellate Side Rules. In the facts of the present case, Rule 6 of Chapter 1 confers jurisdiction on High Court to entertain an application in relation to the transfer of proceedings pending before the Court

subordinate to it.

11. Insofar as the judgment of **Raja Soap Factory & Ors. Vs. S. P. Shantharaj & Ors.**, reported in (AIR 1965 (1) SCC 1449) is concerned, there the suit was filed in relation to rights conferred under the provisions of the Trade Marks Act, 1999, where the cause of action has relevance to the filing of the suit. The Apex Court, in the context of rights conferred under the said Act, has held that since the cause of action for the suit seeking enforcement of rights conferred under the Trade Marks Act, 1999 accrued outside the territorial jurisdiction of the Court, the Apex Court observed that Analogy drawn under Section 24 of the Code of Civil Procedure, 1908 is of no application. In the context of the said facts, the Apex Court observed that the exercise of such jurisdiction is conditioned by the lawful institute of proceeding in a subordinate court. In the facts of the case, there cannot be a dispute about the lawful institution of the proceedings as part of the cause of action for instituting proceedings before the Court in Nandurbar had accrued within the territorial jurisdiction of the said Court. Therefore, the said judgment has no application.

12. Reverting back to the facts of the case, as observed earlier, considering the distance between Nandurbar and Nashik, in my opinion, it would be inconvenient for the wife to travel and, therefore, the applicant has made out a case for transfer.

13. The Apex Court, in the case of **N.C.V. Aishwarya Vs A. S. Saravana Karthik Sha**, reported in (2022 SCC Online SC 1199), has held that considering the socio-economic situation in

the country, generally the inconvenience caused to the wife is a major factor for the exercise of power under Section 24.

14. Therefore, for the aforesaid reasons, in my opinion, the applicant has made out a case for transfer. The application is, therefore, allowed in terms of prayer clause (b).

(AMIT BORKAR, J.)