



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISCELLANEOUS CIVIL APPLICATION NO.511 OF 2022

Ms. Charul Kamal Lodya

... Applicant

Vs.

Mr. Kamal Kishorbhai Lodya

... Respondent

Mr.Omprakash Pandey with Ms.Suchita Pandey and Mr.Rahul Pandey,
Advocates for the Applicant.

Mr.V.S.Tadke i/by Mr.Mohan Gawade, Advocates for the Respondent.

CORAM : ABHAY AHUJA, J.

DATE : 01 SEPTEMBER, 2023.

P.C. :

1. When the matter is called out, learned Sheristedar points out that there is a sealed cover. The sealed cover is opened. The mediation report dated 6th March, 2023 is perused. The report indicates that the mediation has failed. The report is shared with the learned counsel and after their perusal it is taken on record and marked "X" for the purposes of identification.

2. Ms.Suchita Pandey, learned counsel for the Applicant seeks to keep back the matter stating that her senior is in another court. However, learned counsel for the Respondent submits that since the mediation has failed, the objection as to maintainability of the application that was raised by him on the earlier occasion would need to be considered by this court. Learned counsel submits that in view

of section 23(3) of the Code of Civil Procedure 1908, since the Amravati Court comes within the local limits of the Nagpur Bench and therefore the application ought to have been filed in Nagpur and not before this Bench.

3. A perusal of Section 23(3) of the Code of Civil Procedure indicates that where there are courts having jurisdiction subordinate to different High Courts, the application for transfer would lie to the High Court within the local limits of whose jurisdiction the court in which the suit is brought is situate.

4. The divorce petition has been filed by the Respondent-husband before the Civil Judge Senior Division at Amravati. No doubt the said court falls within the local limits of the Nagpur Bench of this Court, however, the said section 23(3) applies to a situation where the subordinate courts are subordinate to different High Courts. The Nagpur Bench is not a different High Court in accordance with section 23(3) of the Code of Civil Procedure, 1908. Therefore, to my mind the objection raised by the learned counsel for the Respondent under this provision cannot be sustained and is rejected.

5. At this stage, learned counsel for the Respondent submits that if that be so, this court may hear the miscellaneous application.

6. Since Mr.Omprakash Pandey, learned counsel for the Applicant was in another court as mentioned above, this matter was kept back.

7. In the afternoon session, the matter is called out. Mr.Omprakash Pandey, learned counsel appears for the Applicant and submits that although the matter has been referred to mediation, the same as recorded in the report of the Mediator has failed though his client would still want to cohabit with the Respondent.

8. Coming to the merits of the Miscellaneous Civil Application, learned counsel for the Applicant submits that the Applicant and the Respondent were married on 29th May, 2009 at Dhamangaon which is close to Amravati as per Hindu Vedic Rites and in the year 2011 they were blessed with a boy. Learned counsel would submit that since the beginning of the marriage, the Applicant had been ill-treated and tortured by the Respondent and his family, mentally and emotionally and also subjected to the verbal abuse. Learned counsel submits that in the year 2013, the husband of the aunt of the Respondent had a heart attack and in front of the relatives, the Applicant was abused and blamed for the heart-attack as being unlucky for them. Learned counsel submits that when the father of the Applicant came to visit the matrimonial home of the Applicant to see the uncle of the Respondent, then Respondent and the aunt told the father of the Applicant to take the Applicant back with him alongwith the son stating that

the son is getting ignored as the uncle's health is not good and the Respondent assured the father of the Applicant that once the health of the uncle will get better, then the Respondent will come and take the Applicant and the minor son back. It is submitted that since then the Applicant and the son have been waiting for the Respondent to take them back and at many times the Respondent has been seeking time. In the year 2015, the health of the uncle deteriorated and he got hospitalized in Mumbai for his treatment and the Applicant once again requested the Respondent and the aunt to take them back but the same did not happen. Mr.Pandey, learned counsel for the Applicant would submit that therefore in the year 2016, the Applicant filed the proceedings under section 12 of the Domestic Violence Act in the Vikhroli Court. Thereafter, in the year 2019 the Applicant was surprised to receive a notice with respect to the divorce petition that had been filed by the Respondent before the Court of Civil Judge at Amravati seeking divorce from the Applicant. Since the Applicant wanted to stay with the Respondent, the Applicant instituted a proceeding for restitution of conjugal rights in the year 2022 in the Family Court at Bandra. Mr.Pandey would submit that in the proceedings before the Court at Amravati, the written statement has been filed on behalf of the Applicant-wife and in the proceedings for restitution of the conjugal rights at Bandra, mediation is going on. Mr.Pandey would submit that the proceedings before the Amravati Court are now listed on 29th September, 2023, the domestic violence proceedings in the Vikhroli Court are listed on 12th September, 2023 and the

proceedings before the Bandra Court are scheduled to be listed on 29th October, 2023.

9. Learned counsel submits that the Applicant has been deserted by her husband and therefore the Applicant is residing at Mumbai with her minor son who is about 12 years and studying in 5th standard. He would submit that being a mother and natural guardian, she is duty bound to get the child ready to go to school and also to leave the child at school and thereafter, to collect the child from school day to day. He also states that Applicant is also duty bound to take the child day to day for tuitions in the morning at 09.00 a.m. and collect him at 11.00 a.m. and thereafter, taking the child to school at 12.45 p.m. and collecting the child from school at 5.30 p.m. every day and as such, if she has to travel to Amravati on the date on which the matter is listed, then considering her time bound duty of care to her son, it would not only be inconvenient but also cause undue hardship to her as well as her minor son. Learned counsel submits that the distance between Amravati and Mumbai is 631 kilometers one way and it takes more than 12 hours to reach there. He would submit that the Applicant is working as a sales-woman, staying with her father at Ghatkopar and as a sales-woman in a garment shop, she earns only Rs.6,000/- per month in addition to Rs.4,000/- that has been awarded as interim maintenance by the Domestic Violence Court as maintenance for the son and therefore, she would not be in a position to afford the travel or the hotel charges, if she has to visit Amravati.

Mr.Pandey, learned counsel would submit that on the other hand no such hardship would be caused to the Respondent-husband if he has to travel from Amravati to Mumbai as in any case he is travelling for the purpose of Domestic Violence proceedings and he is also well to do as he is a businessman who owns agricultural land as well as has construction business and therefore, no such hardship would be caused to him, if he has to travel to the Family Court at Bandra. Learned counsel would also submit that in any event, if the two proceedings, one for divorce and other for restitution of conjugal rights are tried by two courts, then there is possibility of two contrary views on the same set of facts and issues and it would be in the interests of justice that both the proceedings be tried by the same court at Bandra. He therefore requests this court that the Marriage Petition No.26 of 2019 pending in the Court of Civil Judge, Senior Division, Amravati be transferred to the Family Court at Bandra and Marriage Petition No.26 of 2019 and M.J. Petition No.2434 of 2022 be clubbed and tried by the Family Court, Bandra.

10. On the other hand, Mr.Tadke, learned counsel for the Respondent - husband would submit that the proceedings for restitution of conjugal rights are already pending before the Family Court at Bandra. In order to avoid conflicting verdicts, it would be appropriate that the divorce petition is clubbed with the petition for restitution of conjugal rights and heard together. Learned counsel therefore submits that this court may pass appropriate orders.

11. I have heard learned counsel for the Applicant as well as Respondent and considered the rival contentions.

12. It is settled law that while considering the transfer petition in section 24 of the Code of Civil Procedure, 1908, the convenience and hardship caused to the wife is of paramount consideration.

13. The Hon'ble Supreme Court in the case of **N.C.V. Aishwarya Vs. A.S. Saravana Karthik Sha**¹ has clearly observed that while considering transfer, it is the convenience of the wife that has to be considered. Paragraph No.9 of the said decision is 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)

14. The wife is residing in Mumbai after having been allegedly deserted by

1 SCC Online SC 1199 (2022)

her husband along with her 12 years school going child whom she has to look after as detailed in the facts above. Her source of income has mentioned by the learned counsel for the Applicant also appears to be meagre; the distance between Mumbai and Amravati is 631 kms one way. She is residing with her father; while having to look after a school going child, his daily needs as well as attending to her job, in my view travelling to Amravati every time the matter is listed there, would not only cause inconvenience but also undue hardship.

15. Learned counsel for the Respondent has also accepted the argument of the learned counsel for the Applicant that the same set of facts viz. in the restitution proceedings and in the divorce proceedings if adjudicated by two different courts could lead to conflicting decisions and in order to avoid the same, it would be desirable that the two matters are clubbed together and heard together.

16. Ergo, having heard learned counsel and having considered the law on subject, in view of the above discussion, this court is of the view that ends of justice would be met if the Marriage Petition No.26 of 2019 filed by the Respondent-husband before the Court of Civil Judge, Senior Division at Amravati is transferred to the Family Court at Bandra and both the petitions i.e. Marriage Petition No.26 of 2019 and M.J.Petition No.2434 of 2022 filed by the wife at Family Court, Bandra for restitution of conjugal rights are clubbed and

heard together.

17. The application is allowed and made absolute in terms of prayer clause

(a). The parties to bear their own costs.

18. 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.)