

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

MISC. CIVIL APPLICATION NO.741 OF 2022

(Poonam w/o Rohit Dhawale Vs. Rohit s/o Ramdas Dhawale)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri S.G. Joshi, Advocate for the applicant.
Shri G.R. Kothari, Advocate for the non-applicant.

CORAM:- URMILA JOSHI-PHALKE, J.

DATED :- APRIL 11, 2023.

Heard.

2. Present application is for seeking transfer of the matrimonial proceeding pending in the Family Court No.5, Pune bearing Marriage Petition No.A-1590/2022 to the Court at Mehkar.

3. The applicant has raised the ground that the marriage of the applicant with the non-applicant was solemnized on 21/11/2021 as per rites and customs at Mehkar, District Buldhana. At the time of marriage, the parents of the applicant had fulfilled all the demands of the non-applicant and his family members, therefore, she was not treated well and constrained to leave the matrimonial house. Therefore, she is residing at the mercy of her parents. After she was deserted, she had filed a petition under the provisions of Domestic Violence Act which is pending in the Court of Judicial Magistrate First Class, Mehkar. Now the non-applicant has preferred a petition bearing No.A-1550/2022 under Section 27(1)

(d) of the Special Marriage Act for dissolution of marriage alleging that the applicant had treated him cruelty.

4. As per the contention of the applicant that the distance between Mehkar to Pune is more than 350 kilometres. The applicant is only 23 years of age. There is nobody to escort her to attend the proceeding at Pune. If she has to attend the proceeding at Pune, she has to incur the expenses towards litigation as well as towards her stay at Pune which is inconvenient for her. The proceeding filed by her is already pending in the Court of J.M.F.C. at Mehkar, therefore, the matrimonial proceeding filed by the non-applicant has been transferred to the Civil Judge, Senior Division, Mehkar.

5. Said application is strongly opposed by the non-applicant on the ground that the application is filed with the false and baseless grounds as the applicant was a stubborn and egoistic lady and was not interested to reside in joint family. Therefore, she herself at her own left the company of the non-applicant. She was serving in one private College and was earning handsome amount as a salary. The non-applicant has taken every efforts to settle the dispute but it is the applicant who is not ready to settle the dispute.

6. It is further contention of the non-applicant that nowadays he is suffering from the mental illness, and therefore, he is unable to attend the proceeding at Mehkar. He further raised the apprehension that if he attends the proceeding at Mehkar there is possibility of

causing any danger to his life, and therefore, prayed for the rejection of the application.

7. Heard learned Counsel Shri Joshi for the applicant. He reiterated the contentions and submitted that though applicant has claimed that she has no source of income but now the applicant is withdrawing the said statement. Considering the inconvenience which the applicant has to face, if she attends the proceedings at Pune, the proceeding be transferred to Mehkar which is convenient place for the non-applicant also as he has to attend the proceeding which is filed by the applicant. He further submitted that if both the proceedings are decided at one place then it would be convenient for both the parties to raise their issues and there would not be conflicting decisions.

8. Per contra, Shri Kothari, learned Counsel for the non-applicant submitted that the non-applicant is suffering from mental ailment. There is every likelihood that the life and limb of the non-applicant will be in danger if he attends the proceeding at Mehkar. The non-applicant has also filed on record the copy of NC report which is filed by the non-applicant alleging that he received the threats from the relatives of the applicant.

9. Perused the application and the reply filed by the non-applicant.

10. The ground raised by the applicant is that it will be inconvenient for her to attend the proceeding at

Pune which is more than 350 kilometres. The another ground raised by the applicant is that one proceeding is already pending in the Court at Mehkar, and therefore, both the proceedings can be attended and decided at Mehkar which will be convenient for both the parties.

11. On the other hand, Shri Kothari, learned Counsel for the non-applicant is ready to bear the expenses i.e. travelling expenses and expenses toward her stay at Pune. In view of that the application deserves to be rejected.

12. He placed his reliance on *Anindita Das Vs. Srijit Das (2006) 9 SCC 197* wherein the Hon'ble Apex Court has held that at one stage the Supreme Court was showing leniency to ladies. But since then it has been found that a large number of transfer petitions are filed by women taking advantage of the leniency shown by the Supreme Court. On an average at least 10 to 15 transfer petitions are on board of each Court on each admission day. It is, therefore, clear that leniency of the Supreme Court is being misused by the women. The Supreme Court is now required to consider each petition on its merit. In this case, no ground for transfer has been made out. The authorities cited by the petitioner are all based on the facts of their respective cases. They do not lay down any particular law which operates as a precedent. However, the respondent shall pay all travel and stay expenses of the petitioner and her companion for each and every occasion when she is required to attend the

Court at Delhi. The respondents shall send in advance to the petitioner, money for a 2nd class AC train ticket for herself and a companion. The respondent shall also pay stay expenses of the petitioner and her companion in a 3-star hotel. The trial Court shall ensure that the petitioner has been paid the travel expenses in advance and that the hotel expenses are paid to her on each and every occasion when she is required to attend the court at Delhi. He further placed reliance on *K. Jayaram and ors. Vs. Bangalore Development Authority and ors. Civil Appeal Nos.7550-7553/2021* wherein Hon'ble Apex Court held that it is well settled that the jurisdiction exercised by the High Court under Article 226 of the Constitution of India is extraordinary, equitable and discretionary and it is imperative that the petitioner approaching the writ court must come with clean hands and put forward all facts before the Court without concealing or suppressing anything. A litigant is bound to state all facts which are relevant to the litigation. If he withholds some vital or relevant material in order to gain advantage over the other side then he would be guilty of playing fraud with the court as well as with the opposite parties which cannot be countenanced.

13. In the light of the above rival submissions perused the application. The application is filed mainly on the ground that the distance between Mehkar to Pune is more than 350 kilometres and it will inconvenient for the applicant to attend the proceeding at Pune. The further

ground raised is that there is nobody to escort her to attend the proceeding at Pune. Admittedly, the applicant is not an uneducated lady. She was serving as a Lecturer in M.E.S. College of Pharmacy at Mehkar, District Buldhana. Thus, the contention of the applicant that she is unable to travel all alone is unacceptable as she used to travel for her education as well as she has to travel for her job purpose, therefore, the contention raised by the applicant that she is unable to travel alone for 350 kilometres is difficult to accept. The another ground raised is that she has to bear the cost against the travelling as well as for stay at Pune. The said contention is taken care by the non-applicant who had shown the willingness to bear the expenses. The non-applicant has also raised the ground that he is suffering from mental ailment and he produced on record the certificate which shows that he is undergone the psychological treatment at Pune. One NC report is also filed on record to show that he was threatened by the relatives of the applicant and he was abused. Thus, the contention of the non-applicant that there is every likelihood of having danger to his life and limb if he attends the proceeding at Mehkar is required to be taken into consideration. The Hon'ble Apex Court has considered this aspect and observed that though it is true that the leniency it to be shown to the ladies but since it has been found that a large number of transfer petitions are filed by the women taking advantage of the leniency shown by the Supreme Court. This Court has also

experienced the same. On an average before this Court also at least 10 to 15 transfer petitions are filed and are coming on board on each admission day.

14. Admittedly, the convenience of the applicant – wife are to be taken into consideration while considering the transfer applications in the matrimonial cases however, each case has to be considered on its own merits.

15. In the present case, present applicant is not an illiterate lady. She was serving as a Lecturer so travelling alone is not difficult for her. The non-applicant had already shown the readiness to bear the expenses towards the travelling as well as towards her stay. It is, therefore, clear that the aspect of the expenses is taken care of by the non-applicant by showing his readiness. If the application of the applicant is considered on its own merits, the ground raised by the applicant-wife that she is unable to travel 350 kilometres is unacceptable being she is literate lady. As the non-applicant is willing to pay all the expenses for travel and stay of the applicant and her companion for every visit whenever the applicant is required to attend the Court at Pune. Thus, the ground that she has to incur the expenses and she has to stay at Pune is taken care of by the non-applicant by showing his readiness to incur the expenses. So the ground of the applicant is adequately made by the non-applicant by showing the readiness to bear the expenses. Considering the non-applicant is under the treatment of psychologist and taking into consideration the NC report also it will be

appropriate that the applicant shall attend the proceeding at Pune. The non-applicant shall incur the expenses towards her stay as well as towards her travel expenses. Accordingly, no ground is made out to transfer the application from Family Court, Pune to the Civil Judge, Senior Division, Mehkar.

16. I, therefore, direct that the non-applicant shall pay all travel and stay expenses to the applicant and her companion if anybody travels along with her on each and every occasion when she is required to attend the Court at Pune.

17. The Family Court, Pune shall consider her request if it is made for attending through Video Conferencing. The non-applicant shall send in advance to the applicant the amount for travelling for herself as well as for companion. The non-applicant shall also pay stay expenses of the applicant and her companion by providing appropriate place or a hotel by considering the security of the applicant.

18. The trial Court shall ensure that the non-applicant has been paid the travel expenses in advance and the hotel expenses. The trial Court also shall consider the request of the applicant whenever it is made to appear through the Video Conferencing.

19. In view of that the application deserves to be rejected and it is accordingly rejected.