



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

55 MISC.CIVIL APPLICATION NO. 102 OF 2024

Manisha Mangesh Patil

....Applicant

VERSUS

Mangesh Vitthalrao Patil

.....Respondent

.....

Ms. S. S. Auti, Advocate for Applicant.

Mr. P. G. Rodge, Advocate for the Respondent.

CORAM : R. M. JOSHI, J.

DATE : 11th NOVEMBER, 2024.

PER COURT :

1. This application is for transfer of Marriage Petition No. 628/2023 filed by Respondent/husband under Section 9 of Hindu Marriage Act before Civil Judge Senior Division, Pune to Chhatrapati Sambhajnagar.

2. It is the case of Applicant that she has responsibility of a minor child aged 2 years. It is claimed that it is inconvenient for her to travel from Chhatrapati Sambhajnagar to Pune to attend said proceeding. Distance between these two places is about 240 kms.

3. Respondent resisted this application by claiming that due to physical inability, he is not in a position to travel from Pune to Chhatrapati Sambhajanagar if the proceedings are transferred as sought by the Applicant. In support of his contention, he has placed on record medical papers. He relied upon medical certificate dated 20.06.2024 indicating Respondent being diagnosed 'Degenerative Disc Disease with Diffuse'.

4. Learned counsel for Applicant submits that Applicant is a lady and she has responsibility of a child aged two years and, therefore, to call up her to attend proceedings at Pune will cause prejudice to her right to defend effectively. It is also contended that on the basis of medical papers placed on record by the Respondent, it cannot be said that Respondent is bed ridden. According to her, in matrimonial proceedings the convenience of wife needs to be taken into consideration and to support said statement she has placed reliance on following judgments :-

- (i) Sumita Singh vs. Kumar Sanjay and another
(2001) 10 Supreme court Cases 41.
- (ii) Ashwini Kailas Patil vs. Shivajirao Anandrao Gaekwar
Misc. Civil Application No. 46/2020.
- (iii) Neha Maruti Ghune vs. Maruti Balu Ghune

Misc. Civil Application No. 334/2023.

5. Learned counsel for Respondent has opposed the said submission by contending that Respondent even cannot stand independently without any assistance and as such, it is practically not possible for him to travel from Pune to Chhatrapati Sambhajanagar.

6. At the outset, considering medical papers placed on record, this Court had suggested learned counsel for the Applicant that in case Applicant agrees she can be directed to be paid conveyance and other expenses required for attending the proceeding before Court at Pune. Learned counsel for Applicant, on instructions, rejected such proposal and challenges the medical papers, by contending that the disease diagnosed is not an impediment for travel.

7. Since dispute is made by parties with regard to the physical status of Respondent, this Court has thought it appropriate to call upon the Medical Officer from Civil Hospital attached to High Court Dispensary to give his opinion, on the basis of available

medical papers. The Medical Officer, after going through the copies of medical papers placed on record by Respondent, has expressed his candid opinion that having regard to the disease diagnosed, if the Respondent is called upon to travel such a distance, it will deteriorate his physical condition.

8. This Court has no reason to disregard the opinion of the Medical Officer who is not only an expert but also an independent person having no concern with the parties to the present proceeding.

9. There cannot be any dispute made with regard to the proposition sought to be canvassed by learned counsel for the Applicant relying upon the judgments (supra) that convenience of wife needs to be taken into consideration while deciding place of trial of matrimonial proceedings. However, there is no law that once wife files an application for transfer of proceeding such application must be allowed in all circumstances. Here in this case, only inconvenience which the wife is likely to suffer is the distance required to be travelled between two places. As against this, Respondent has been able to show that it is practically not possible for him to travel from Pune to Chhatrapati Sambhajanagar. The

Court cannot turn a blind eye to the situation that compelling Respondent to travel said distance of more than 200 kms. will deteriorate his physical condition. In such circumstances, there would be absolutely no justification for accepting the prayer of the Applicant to transfer proceeding in question from Pune to Chhatrapati Sambhajinagar.

10. The comparative hardship that would be suffered by Respondent is more grave and serious if the proceeding is transferred to Chhatrapati Sambhajinagar, as compared to the inconvenience caused to the Applicant for travel. Hence, it is not a fit case to direct transfer of proceedings as prayed. Hence, application stands dismissed.

(R. M. JOSHI)
Judge

dyb