



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

930 MISC.CIVIL APPLICATION NO. 187 OF 2023

Harshali W/o Nilesh NeheteApplicant

VERSUS

Nilesh S/o Suresh NeheteRespondent

Mr. Shaikh Mohammad Naseer A, Advocate for the Applicant.
Mr. M. M. Bhokarikar, Advocate for the Respondent.

CORAM : R. M. JOSHI, J.

DATE : 1st AUGUST, 2024.

PER COURT :

1. This application is for transfer of Hindu Marriage Petition No. 475/2022 pending before Civil Judge Senior Division, Bhusawal to Bandra Mumbai.

2. Applicant is wife. She contends that she is employed and presently posted at Mumbai. She also claims that she is required to take care of a minor child who needs continuous medical attendance/treatment. She claims that owing to this responsibility it would not be possible for her to attend the proceedings filed by Respondent pending before Civil Judge Senior Division, Bhusawal.

3. Respondent has appeared in the application and filed affidavit-in-reply. It is his contention that RCC No. 48/2020 initiated at the instance of the Applicant is pending against him before Judicial Magistrate First Class, Bhusawal. On this amongst grounds, he opposes the application.

4. Learned counsel for Applicant submits that RCC No. 48/2020 is a State case and that Applicant is not required to prosecute the same. He has drawn attention of the Court to the Petition bearing Writ Petition No. 6295/2023 filed by Respondent before Division Bench of this Court challenging transfer order of the Applicant from Bhusawal. He has placed on record photocopy of order dated 15.06.2023 indicating that the said Petition is dismissed by imposing cost of Rs. 50,000/-. It is his submission that considering the responsibility of the child who requires medical attendance, it would not be feasible for her to attend the proceeding pending at Bhusawal and that it will affect her right of defence.

5. Learned counsel for Respondent submits that Respondent is holding responsible post in Government service. It is his submission that considering pendency of RCC No. 48/2020 at

Bhusawal, no case is made out for transfer of proceeding from Bhusawal to Mumbai. It is his submission that he be permitted to appear through video conferencing if this Court is inclined to transfer Marriage Petition No. 475/2022 to Mumbai. To support his submission, he placed reliance on judgments of this Court in case of Divya vs. Chandrashekar, **MANU/MH/2166/2024** and Priyanka Patro vs. Arvind Rajasekar, **MANU/MH/4021/2023**.

6. There is no dispute about the fact that Applicant is having a minor child who requires regular medical attendance. Admittedly, she is working at Mumbai. Law on the point of transfer of proceedings is fairly settled to say that convenience of the wife is paramount. The only submission of Respondent requires consideration for opposing application is about pendency of RCC No. 48/2020 at Bhusawal. This being the State case, Applicant is not required to prosecute the same. Thus, pendency of said proceeding at Bhusawal would not become a ground for rejection of application. It is pertinent to note that proceeding filed Protection of Women from Domestic Violence Act is already transferred from Bhusawal to Mumbai. All the aforesaid facts clearly show that it is a fit case for allowing the application. Hence, application is allowed. Hindu

Marriage Petition No. 475/2022 pending on the file of Civil Judge Senior Division, Bhusawal is transferred to Family Court at Bandra Mumbai.

7. As far as permission sought by the Respondent to appear through video conferencing is concerned, this Court does not wish to encroach upon jurisdiction of the Trial Court. It is within the domain of the Trial Court to consider the circumstances in which such permission for appearance through virtual mode to be granted. It is for the Family Court, Mumbai to take decision, if any such application is moved.

8. Hence, application stands allowed in terms of prayer clause 'B'. Parties are directed to appear before Family Court at Bandra, Mumbai on 09.08.2024. No separate notice is to be issued for their appearance by said Court.

(R. M. JOSHI)
Judge

dyb