

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO. 162 OF 2023

Priyanka Dayawan Adagale

.. Applicant

Versus

Dayawan Mohan Adagale

.. Respondent

.....

- Ms. Neha Zanje i/by Mr. Amey C. Sawant for Applicant
- Mr. Akshay Kamble a/w Ms. Neha Patil & Mr. Pritesh Bodekar i/by Vivaka Partners for Respondent

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CORAM : MILIND N. JADHAV, J.

DATE : AUGUST 30, 2024

P. C.:

1. Heard Ms. Zanje, learned Advocate for Applicant and Mr. Kamble, learned Advocate for Respondent.

2. This Application is by Applicant - wife seeking transfer of Marriage Petition No. A-HMP 371 of 2022 filed by Respondent - husband in the Court of Civil Court at Panvel to the District Court, Satara.

3. Now there is Family Court established at Satara which should be the correct jurisdictional Court. Application has remained pending for the past more than one year and several orders have been passed. The effort taken by my predecessor Judge for mediating and reconciliation by calling parties in the chamber has not fructified, resultantly the Application is now required to be heard and decided.

4. Applicant states that her father has expired and her mother is of old age. The address given by Applicant in the Application is that of being a resident of Mahagaon, Satara, Maharashtra. Mr. Kamble would inform the Court that Applicant has given the address of the residence of her uncle in Satara. Apart from proximity of distance which is evident on the face of record, grounds of hardship enumerated by Applicant in paragraph No. 6 onwards in the Application upto paragraph No. 13 are clearly evident and on perusing the same, there is no reason whatsoever to disbelieve those grounds.

5. **PER CONTRA**, Mr. Kamble would draw my attention to the twin affidavits in reply filed by Respondent dated 11.09.2023 and 27.08.2024 to oppose the Application. He would persuade me to read the affidavits and would submit that the entire plea of Applicant is false and fabricated. He would submit that the falsity of Applicant is evident from the fact that she has not appended any documentary evidence or proof of her residence wherein she is residing in Satara so as to entitle her to maintain the present Application for seeking a transfer. He would submit that Respondent has investigated and found out that Applicant is residing in the residence at Satara which belongs to her uncle and not the Applicant. He would submit that this fact was unearthed by the bailiff who visited Satara to serve the copy of

Marriage Petition on Respondent and the bailiff was accordingly informed by her uncle that Applicant did not reside at that address.

6. The aforesaid submission is purely hearsay and merely because it is stated in the affidavit in black and white it cannot be countenanced. Applicant in her Application has clearly stated that her father has expired and her mother is of old age. Applicant is not required to give documentary evidence and proof of title about her residence in Satara as envisaged and argued by Mr. Kamble for maintainability of the Application. Averments in the Application clearly state that due to dispute between the parties, Applicant was forced to leave her matrimonial house and live in her uncle's house till the dispute gets resolved. Said averment is made in paragraph No. 3 of the Application and therefore the submission made by Mr. Kamble is dismissed in *limine*.

7. Mr. Kamble has made one more submission across the bar which has clearly unsettled the conscious of this Court. He would submit that according to Respondent, marriage between the parties has not been consummated by giving a mathematical approach. He would argue and submit that out of the 80 months post marriage between the parties, they both have cohabited only for a period of 10 months together and therefore the marriage is not consummated. The fact that there was cohabitation between the parties for a period of ten

months itself conclusively establishes the presumption, rather a strong assumption about consummation of marriage between the parties unless it is proved to the contrary. This is how the Indian law has proceeded on the assumption unless disproved by cogent evidence. However, he would candidly submit that this ground is not pleaded in the objections raised. Nevertheless, this ground is completely irrelevant for this proceeding before me.

8. After perusing the pleadings and hearing the learned Advocates, I am of the clear opinion that the present Application deserves to be allowed immediately without any delay whatsoever as the grounds of hardship of Applicant are evident.

9. The Supreme Court has in paragraph Nos. 9 to 11 in the case of ***N.C.V. Aishwarya Vs. A.S. Saravana Karthik Sha***, reported in AIR 2022 SC 4318 held 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 life. 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.

10. Further, when two or more proceedings are pending in different Courts between the same parties which raise

common question of fact and law, and when the decisions in the cases are interdependent, it is desirable that they should be tried together by the same Judge so as to avoid multiplicity in trial of the same issues and conflict of decisions.

11. *As noticed above, the Appellant is a young lady aged about 21 years, staying alone along with her aged parents. Under the above circumstances, it is difficult for her to travel all the way from Chennai to Vellore to attend the court proceedings of the case filed by the Respondent seeking annulment of marriage. Further, it is also just and proper to club all the three cases together to avoid multiplicity of the proceedings and conflict of decisions. Therefore, the High Court was not justified in rejecting transfer petition bearing TR.C.M.PNo. 473 of 2020, filed by the Appellant herein.*

10. Applying the above yardstick to the facts of the present case, the Applicant has clearly made out a case for transfer of the Marriage Petition.

11. In view of the above, Application is allowed and disposed of in terms of prayer clause (a) which reads as under:-

“(a) this Hon'ble Court be pleased to transfer proceedings bearing Marriage Petition No. A-HMP 371 of 2022 pending on the file of Ld. District Court, Panvel to Ld. District Court, Satara at Satara.”

12. Both the Courts shall take cognizance of a server copy of this order and act immediately for effecting transfer without insisting on a certified copy of the order.

[MILIND N. JADHAV, J.]

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