

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO. 283 OF 2024

Asmita Shriprasad Rakshe

.. Applicant

Versus

Shriprasad Ravindra Rakshe

.. Respondent

.....

- Ms. Shejal A. Hariyan i/by Ppadmanabh Associates for Applicant
- Mr. Chirag R. Sonecha for Respondent (through VC)

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CORAM : MILIND N. JADHAV, J.**DATE : SEPTEMBER 5, 2024****P. C.:**

1. Heard Ms. Hariyan, learned Advocate for Applicant and Mr. Sonecha, learned Advocate for Respondent.

2. By filing the present Misc. Civil Application (MCA), Applicant seeks transfer of Marriage Petition No. 104/2022 filed by Respondent - husband before CJSD, Sangli to the Court of CJSD, Ichalkaranji, Dist. Kolhapur where the Applicant is residing.

3. One of the grounds stated in the Application is that Applicant has filed Application under Section 9 of the Hindu Marriage Act, 1955 bearing H.M.P No. 349 of 2022 which is pending in the Court of CJSD, Ichalkaranji. That apart the facts in the present case show that there are two children out of wedlock; one child is residing with Applicant and another child is residing with Respondent. Mr. Sonecha would draw my attention to two specific paragraphs in the Application i.e.

paragraph Nos. 5 and 11 to contend that the allegations made therein are extremely serious and they ought not to be considered as they may prejudice the mind of the Court. I have perused those paragraphs and it is seen that Mr. Sonecha is right at least in some respect. No doubt when such Applications are filed, parties make severe allegations on each other and this is what is observed by this Court. That apart Mr. Sonecha would also submit that distance between the two destinations is not much and therefore there is no reason as to why the Marriage Petition is required to be transferred to the Court at Ichalkaranji since the Respondent is ready and willing to bear the expenses that would be incurred by the Applicant wife to travel to the Court at Sangli for attending the proceedings. Mr. Sonecha may be right in his contention in so far as the proximity of distance is concerned but what is crucial for the Court to note is the fact that there are two different Courts which will be dealing with similar questions of fact and law arising between the same parties and therefore there is probability of having the same issue decided by two different Courts and conflict of judicial decisions. Be that as it may for consideration of transfer of the Marriage Petition as also the D.V. Act proceedings which are pending, the learned Trial Court shall undoubtedly decide the same on the basis of common questions of fact and law and issues arising in the cases which would undoubtedly be interdependent on each other. This is a

clear case where the issue regarding questions of fact and law between the same parties would be interdependent on each other and in that view of the matter, it would be desirable that the proceedings should be tried together.

4. Once I come to the conclusion that the proceedings are required to be tried together, then question of inconvenience of Applicant will have to be looked into. As observed by the Supreme Court in the case of **N.C.V. Aishwarya Vs. A.S. Saravana Karthik Sha**¹ 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. Said principle is required to be applied in the present case. Considering the hardship that will be encountered by the Applicant, the hardship of Respondent is much less. In that view of the matter, I am inclined to allow the present Application. Hence, the present MCA is allowed in terms of prayer clause (b) which reads thus:-

"(b) This Hon'ble High Court Bombay, after going into legality and validity of the case, be please to transfer the Marriage Petition No.104/2022 filed by the Respondent against the Petitioner before C.J.S.D., Sangli, for Divorce u/sec. 13(1)(i-a) of Hindu Marriage Act, to the Court of CJSD, Ichalkaranji, wherein the HMP No. 349 of 2022 filed by Petitioner against the Respondent for restitution of conjugal rights under Section 9 of Hindu Marriage Act is pending."

¹ AIR 2022 SC 4318

5. Keeping all questions and contentions of both the parties open, learned Trial Court shall decide the proceedings strictly in accordance with law.

6. MCA is allowed and disposed.

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[MILIND N. JADHAV, J.]

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