

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO. 104 OF 2024

Gauri Vishal Patil

.. Applicant

Versus

Vishal Vijay Patil

.. Respondent

.....

- Mr. Vaibhav S. Parab for Applicant
- Ms. Trupti Bharadi (through VC) a/w Mr. Mukesh Chaudhary for Respondent

.....

CORAM : MILIND N. JADHAV, J.

DATE : OCTOBER 4, 2024

P. C.:

1. Heard Mr. Parab, learned Advocate for Applicant and Ms. Bharadi, learned Advocate for Respondent who appeared through VC.

2. Present Misc. Civil Application (MCA) seeks transfer of D.V. Act proceedings bearing D.V. Case No. 396 of 2019 filed by Applicant - wife pending before Metropolitan Magistrate 10th Court at Andheri, Mumbai to the Civil Court of Civil Judge Junior Division, Nashik.

3. Applicant is a physiotherapist (Doctor) and is presently residing in Nashik along with her parents and her six year old son born out of the wedlock with Respondent No. 1 – husband.

4. Mr. Parab would submit that Applicant has relocated to Nashik and at present is carrying on her profession in Nashik. He would submit that she is required to provide care and support to her six year

old son who is enrolled in a school in Nashik. He would draw my attention to the MCA and would submit that the reasons stated in paragraph Nos. 5 to 9 of the MCA be considered by the Court. He would submit that apart from proximity of distance between the two destinations and requiring assistance / accompaniment of elder / parent to travel from Nashik to Mumbai to attend the D.V. Act proceedings caused immense hardship to the Applicant. Hence, he would submit that present MCA be allowed looking to the inconvenience caused to Applicant-wife.

5. *Per contra* Ms. Bharadi appearing for Respondent through VC would draw my attention to the cause title of MCA and has persuaded me to consider the fact that Respondent Nos. 4 and 5 are residing separately in their respective matrimonial homes and that they have never resided in the matrimonial home of the Applicant and have been unnecessarily dragged into litigation. She would submit that the degree of difficulty espoused by Mr. Parab would equally apply to the Respondents in toto. She would submit that Respondent Nos. 2 and 3 are parents of Respondent No. 1 – husband. Respondent No. 2 is 79 years old whereas Respondent No. 3 is 75 years old. She would submit that Respondent No. 1 is employed in the IT Sector in Mumbai and it would be equally difficult for him also to attend the proceedings along with his old parents in Nashik as it may jeopardize his job prospects in

Mumbai. She would submit that Respondent is the breadwinner of his family.

6. After hearing learned Advocate for Respondents, I agree with the degree of difficulty expressed by her *qua* Respondents and the same therefore needs to be redressed equally.

7. Considering the hardship that would be enured by Applicant in view of the proximity of distance between the two destinations as also she requiring assistance and accompaniment of an elder / parent to accompany her to attend the Court proceedings in Mumbai and most importantly she requiring to provide care and support for her six year old son, the difficulty and decree of hardship encountered by Applicant would clearly outweigh the submissions made by the learned Advocate for Respondents. However, this does not mean that the difficulty that would be encountered by Respondents will have to be ignored. Respondent Nos. 2 and 3 are undoubtedly of old age and they cannot be put to task and trouble of traversing the distance between Mumbai and Nashik to attend the proceedings. Hence, their presence in the proceedings stands exempted. In so far as Respondent Nos. 1, 4 and 5 are concerned, they are permitted to appear on VC. Learned Court of Civil Judge Junior Division, Nashik to which the D.V. Act proceedings shall be transferred will permit Respondent Nos. 1, 4, and 5 to appear on VC on all the scheduled dates of hearing. If facility

for appearing on VC is not available there, Civil Judge Junior Division, Nashik shall ensure that Respondent Nos. 1, 4, and 5 appear on video call. Respondent Nos. 2 and 3 are exempted from appearance in the D.V. Act proceedings due to their old age before the Civil Judge Junior Division, Nashik.

8. With the above directions, present MCA is allowed in terms of prayer clause (b) which reads thus:-

"(b) Be pleased to transfer the papers and proceedings of the D. V. Case No. 396 of 2019 pending before the Ld. Metropolitan Magistrate, 10th Court at Andheri, Mumbai, to Hon'ble Jt. Civil Judge Junior Division, Nashik and tried accordingly."

9. All concerned Courts shall take cognizance of a server copy of this order and shall not insist on a certified copy of the order and act accordingly for transfer and re-registration of the proceedings as expeditiously as possible and in any event within two weeks from the date of presentation of a server copy of this order to the Courts by the Advocates for the parties.

10. MCA is allowed and disposed.

[MILIND N. JADHAV, J.]

Amberkar

RAVINDRA
MOHAN
AMBERKAR
Digitally signed
by RAVINDRA
MOHAN
AMBERKAR
Date:
2024.10.04
19:03:49 +0530