

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO. 126 OF 2024

Kashmira Yadnesh Pawar

.. Applicant

Versus

Yadnesh Govind Pawar

.. Respondent

.....

- Ms. Aneeta Kataria for Applicant (through VC)
- Ms. Latika Chitre a/w Ms. Pragati Angir for Respondent

.....

CORAM : MILIND N. JADHAV, J.

DATE : AUGUST 16, 2024

P. C.:

1. Heard Ms. Kataria, learned Advocate for Applicant through VC and Ms. Chitre, learned Advocate for Respondent.

2. Applicant has filed the present MCA seeking transfer of proceedings i.e. P.A. No. 1504 of 2023 filed under Section 9 of the Hindu Marriage Act and proceedings i.e. P.D. No. 36 of 2023 seeking custody of the child. Both these proceedings are filed in Family Court, Pune.

3. Ms. Kataria would submit that the child is a school going son and residing with Applicant at Chiplun along with her parents. He is seven years old. She would draw my attention to the grounds mentioned in the Application to contend that proximity of distance between Chiplun and Pune as also taking care of the son are the principal grounds of hardship. It is seen that the son is studying in

Mary Matha School, Chiplun and survival of the Applicant is solely on the basis of old age pension received by her father. Considering the above, ground of hardship is clearly evident and therefore *prima facie* case is made out for allowing the present MCA.

4. *Per Contra*, Ms. Chitre, learned Advocate for the Respondent would draw my attention to the affidavit in reply dated 09.02.2024 and also additional affidavit in reply dated 03.05.2024 and contend that Applicant is not abiding the order of the Court regarding giving access as directed and therefore this conduct of her dis-entitles her for any relief of transfer. She has persuaded me to go through the affidavit-in-reply and the averments made in paragraph No. 4 thereof which are made in support of her above submission. Be that as it may, those grounds or reasons cannot come in the way of the Court to consider the transfer Application. Next she would contend that by interim order dated 29.07.2024 passed by this Court (Coram : Arun J. Pednekar, J.), directions were given to Applicant to give access and visitation rights to Respondent but there is dereliction on the part of the Applicant to comply with those directions also. In reply to this, Ms. Kataria would submit that directions contained in the above order are fully complied with and she has instructions to submit that the second meeting of the son with the Respondent-father was fruitful and the parties have on their own agreed to have access to the son on

every Sunday in substitution of every Saturday as stated in the order dated 29.07.2024. Ms. Chitre, in the presence of Respondent present in Court before me, would urge and persuade the Court to consider the directions passed in order dated 29.07.2024 and pass further appropriate directions in that regard since Respondent has taken a house / room in Chiplun so that he can stay there and have access to his son. The submissions made by Mr. Chitre are no doubt genuine, but the hands of this Court are tied since the Application before the Court is under Section 24 of the CPC seeking transfer of the proceedings between parties and the ambit and scope of the said Application is clearly spelt out. Be that as it may, one of the proceedings which is being transferred is the custody petition filed by Respondent. Said Petition is filed under the provisions of Section 25 of the Guardians and Wards Act, 1890. Hence, it shall be open to the Respondent to take out an appropriate Interim Application if he so desires and if so advised before the appropriate Court where the said Custody Petition is being transferred and seek orders therein.

5. Considering the hardship expressed by Applicant and as delineated herein above, the present MCA stands allowed in terms of prayer clause (a) which reads as under:-

"(a) The proceedings of Petition No. PA. 1504 of 2023 & PD. No. 36/2023 be transferred from Family Court Pune to Civil Judge

Senior Division Khed, Dist. Ratnagiri having jurisdiction to try and entertain the matter."

6. In view of the above order, it is further directed that in the event if the Respondent takes out an appropriate Application in his Custody Petition for seeking access and visitation rights to the child, the same shall be dealt with as expeditiously as possible by the District Judge-1, Chiplun without any delay. That apart a request is also made by Ms. Chitre to expedite the hearing of the Custody Petition. Request made by Ms. Chitre is fair in the facts and circumstances of the present case and considering the age of the child and hence it deserves to be allowed considering that the delay that may be caused would be detrimental and prejudicial to the interest of the Respondent. Hence, I direct the learned District Judge-1, Chiplun to determine and decide the Custody Petition as expeditiously as possible and in any event within a period of one year from today strictly in accordance with law.
7. It is clarified that the Section 9 Petition i.e. P.A. No. 1504/2023 shall stand transferred to the Court of the Civil Judge Senior Division, Khed, Dist. Ratnagiri whereas the Custody Petition No. 36 of 2023 shall stand transferred to the Court of District Judge-1, Chiplun.
8. All contentions of both the parties are expressly kept open.
9. With the above directions, present MCA is allowed and disposed.

[MILIND N. JADHAV, J.]