

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO. 160 OF 2024

Ulfa Haneef Khwaja .. Applicant
Versus
Amirkusro Gulamrasul Jamadar .. Respondent

-
- Ms. Ankita Bamboli a/w Ms. Priya Mehta for Applicant
 - Mr. S.S. Borkar a/w Mr. Hitendra Parab for Respondent
-

CORAM : MILIND N. JADHAV, J.

DATE : AUGUST 30, 2024

P. C.:

1. Heard Ms. Bamboli, learned Advocate for Applicant and Mr. Borkar, learned Advocate for Respondent.

2. By the present Misc. Civil Application (MCA), Applicant seeks transfer of Matrimonial Petition No. 153/2023/C and Civil Miscellaneous Application No. 19/2024 from Civil Judge Senior Division, C Court, Mapusa, Goa to the Family Court at Bandra, Mumbai.

3. Applicant is the wife. She is residing with her mother in Mumbai alongwith her four year old daughter. Grounds of hardship are enumerated in paragraph No. (h) onwards of the Application. I have perused the same. There is D.V. Act proceedings filed by the Applicant which is pending before the Metropolitan Magistrate Court, Andheri, Mumbai. That apart proximity of distance between the two

destinations will have to be considered as an adequate ground. Applicant is a student pursuing her higher studies at IIT Powai. The grounds of hardship are thus clearly evident.

4. This Court also has the jurisdiction to entertain the present Application seeking transfer of proceedings pending in the Courts at Goa in this case in view of the decision of this Court (Coram : Dr. Shalini Phansalkar - Joshi, J.) in the case of **Irene Blanch Khera Vs. Glenn John Vijay**¹, which is duly considered and affirmed by the Supreme Court on 28.02.2023 in its decision in the case of **Shah Newaz Khan & Ors. Vs. State of Nagaland & Ors**².

5. Mr. Borkar would draw my attention to the affidavit in reply filed by Respondent dated 16.8.2024 and would contend that one of the reasons as to why the proceedings be allowed to remain in the Civil Court at Goa is due to the lower pendency of the cases over there so that there will be an early disposal and if proceedings are transferred to the Family Court, Bandra, Mumbai, considering the pendency in that Court it would lead to further protraction and delay. I appreciate the conduct and submissions made by Mr. Borkar as he has restricted his submission only to the aforesaid issue and has not unnecessarily argued any irrelevant issues which is normally observed by this Court in MCA matters. The issue raised though appeals to the

1 2018 (6) Mh.L.J. 199

2 (2023) 11 SCC 376

Court, but the hardship encountered by the Applicant in the facts of the present case as also the inconvenience will deserve consideration.

6. In so far as the hardship and convenience of the Applicant is concerned, same is clearly evident and therefore the Application deserves to be allowed.

7. As such, Application is allowed and disposed of in terms of prayer clause (a) which reads as under:-

“(a) That this Hon'ble Court be pleased to transfer proceedings in Matrimonial Petition No. 153/2023/C and transfer proceedings in Civil Miscellaneous Application No. 19/2024 from the Hon'ble Civil Judge Senior Division, C Court, Mapusa Goa to the Hon'ble Bandra Family Court, at Mumbai”

8. On the joint request by the learned Advocates, it is also directed that the D.V. Act proceedings bearing No. 32/DV/2024 which is pending before the Metropolitan Magistrate Court, Andheri, Mumbai be transferred to the Family Court at Bandra, Mumbai and also directed to be clubbed and heard together alongwith the proceedings which have been directed to be transferred by this order. Both parties agree to the same.

9. Considering the timeline in the matter, learned Family Court at Bandra, Mumbai is directed to dispose of the proceedings as expeditiously as possible and in any event within a period of one year from today. Parties shall co-operate with the Family Court and shall

not seek unnecessary adjournments unless it is absolutely necessary in case of any urgency or emergency

10. All contentions of the parties are expressly kept open without delineating anything on merits of the matter.

11. Liberty to the parties to apply to the Family Court at Bandra, Mumbai for seeking clarification of any of the orders passed by the Courts pertaining to access / visitation rights.

12. Concerned Courts shall take cognizance of a server copy of this order and act accordingly without insisting on a certified copy.

13. MCA is allowed and disposed.

Amberkar

[MILIND N. JADHAV, J.]

RAVINDRA
MOHAN
AMBERKAR
Digitally signed
by RAVINDRA
MOHAN
AMBERKAR
Date:
2024.08.30
20:44:37 +0530