

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISCELLANEOUS CIVIL APPLICATION NO. 213 OF 2024

Priyanka w/o Mayur Hirlekar

.. Applicant

Versus

Mayur s/o Pradip Hirlekar

.. Respondent

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- Mr. Piyush Pande, Advocate for Applicant through VC.
 - Ms. Surekha Palekar, Advocate for Respondent.
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CORAM : MILIND N. JADHAV, J.

DATE : AUGUST 28, 2024

ORAL JUDGMENT:

1. Heard Mr. Pande, learned Advocate for Applicant through VC and Ms. Palekar, learned Advocate for Respondent.

2. Present Misc. Civil Application (for short “MCA”) is filed by Applicant – wife seeking transfer of Marriage Petition being nomenclatured as A-2306 of 2022 from the Family Court Judge – 3 at Bandra, Mumbai to the Family Court No.2 at Nagpur. Applicant resides in Nagpur alongwith her parents.

3. Admittedly, Respondent – husband is a resident of Chicago, Illinois State in the United States of America for the last several years. Parties got married in 2016. Maintenance proceedings are filed in the Court of Principal Judge, Family Court at Nagpur by Applicant in the year 2019. Marriage Petition is filed by Respondent in the year 2021 in Mumbai through his father as his Constituted Power of Attorney.

4. The grounds of hardship are enumerated from paragraph No.5 onwards in the Application. I have perused the same; apart from the fact that the Applicant being financially dependent on her parents, it is averred by Applicant that Respondent has not paid a single farthing to the Applicant towards maintenance despite various orders of the Court. Apparently the orders of the Court are breached by the Respondent. Proximity of distance between the two destinations is clearly evident and cannot be denied at all. Parents of Applicant are of old age and undoubtedly due to that reason they would not be in a position to accompany the Applicant on every date of hearing to Mumbai. On perusing the grounds enumerated in the MCA, Applicant has made out a clear case for allowing the MCA. There can be no impediment whatsoever in allowing this Application.

5. *PER CONTRA*, Ms. Palekar, learned Advocate for the Respondent has drawn my attention to the Affidavit-in-Reply dated 23.08.2024 and would submit that it is true that Respondent is a resident of USA and works there. She would candidly inform the Court that Marriage Petition was filed in Mumbai by his Constituted Power of Attorney i.e. his father and the father of the Respondent is prosecuting the same till date. She would submit that father of Respondent is equally old and has medical issues and hence it would be difficult for him to travel all the way to Nagpur and hence the Application filed by Applicant be rejected.

6. That apart, the said Reply states that Applicant is well educated having done her MBA and before marriage she was having a job at Pune and therefore that should be treated as one of the ground for rejecting the Application. It has come in the Reply that Applicant's father is a retired Excise Officer and her mother is a retired Teacher and they are getting handsome amount of pension which should be considered for rejecting the Application. It is further stated that Applicant's brother is having his business in Pune and resides there and therefore there cannot be any impediment to Applicant who is educated and financially sound to travel to Pune and thereafter travel from Pune to Mumbai to attend the proceedings on the scheduled dates.

7. On the aforesaid grounds, Affidavit-in-Reply filed by Respondent is attempted to be justified by stating that it is the Respondent's father who is prosecuting the Marriage Petition and he will face extreme hardship, physical exertion and harassment if the Divorce Petition is transferred out of Mumbai. I have perused the Affidavit-in-Reply filed by Respondent's father on behalf of Respondent as his Constituted Power of Attorney. At the outset, it is stated that grounds in the Reply are made with utter insensitivity on the part of the Respondent as also equally argued with utter callousness by the arguing Advocate. It is seen that the objections and grounds enumerated in the Reply are as selfish as they can be. Respondent is

living in America for the past several years. Petition is filed by his father as his PoA. There are orders passed for payment of maintenance which are flouted with disdain by Respondent, despite he earning his salary of thousands of dollars every month. Inconvenience to wife is the most critical factor for consideration under Section 24 of the Code of Civil Procedure, 1908 (for short “CPC”). Learned Advocate for Respondent would however import the father-in-law’s hardship under Section 24 of the CPC when admittedly the husband is enjoying his life in America without any hardship.

8. In the case of *N.C.V. Aishwarya Vs. A.S. Saravana Karthik Sha¹* in paragraph Nos.9 to 12 thereof, the Supreme Court holds that the principle for exercise of power under Section 24 of the CPC is that ends of justice should demand the transfer of the Suit, Appeal or other proceeding. It further holds that in matrimonial matters, wherever Courts are called upon to consider the plea of transfer, 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 in life.

¹ AIR 2022 SC 4318

9. The submissions advanced by the learned Advocate for Respondent on the basis of the averments made in the Affidavit-in-Reply therefore are obdurate and do not qualify for consideration as they are made utterly out of context and only to please the client.

10. The Supreme Court further holds that given the prevailing socio-economic paradigm in the Indian society, generally, it is the wife's convenience which is looked at while considering transfer. Here is the case of the Respondent who is well ensconced in the USA earning a handsome salary. Hence there is no hardship whatsoever to the Respondent. It is argued by Respondent that the Respondent's father will face extreme hardship. Respondent's father is 63 years old only. He is present before me in Court. He appears to be hale and hearty. He is seen briefing the Advocate repeatedly in Court during hearing. His age is evident from the verification clause of the Affidavit-in-Reply. What is not considered by the Respondent as against the purported extreme hardship of his father is the hardship and the emotional and psychological trauma of the Applicant who is not employed and is totally dependant on her parents (who are both retired government servant / teacher and are surviving on their pension) for her livelihood. What is crucial to note is the fact that the Applicant is a lady staying alone alongwith her aged parents for the past several years post marriage and under these circumstances, it would be absolutely difficult for her to travel alone all the way from

Nagpur to Mumbai, where the one way distance is 770 kms. and stay alone in Mumbai to attend the proceedings. Her retired parents cannot be expected to accompany her to give her moral and emotional support on all dates of hearing in Mumbai. Such hardship is completely ignored by Respondent while arguing the matter. The parameters laid down by the Supreme Court in *N.C.V. Aishwarya's* case (*supra*) and delineated in paragraph No.8 hereinabove are squarely applicable in such facts in favour of Applicant and clearly against the Respondent. The hardship of the Applicant is therefore clearly evident and it far outweighs the submissions made on behalf of Respondent.

11. I am informed by Advocate for Applicant that despite orders passed by the Civil Court in Nagpur in the maintenance proceedings, there is an outstanding maintenance arrears of more than Rs.10 lakhs which the Respondent has not paid over to Applicant. This itself shows the audacity and conduct of the Respondent in adhering to and treating the orders of the Courts in India with impunity. The reasons stated by the Respondent in the Affidavit-in-Reply to oppose the Application as also advanced by his Advocate therefore cannot be endorsed by any yardstick and they deserve to be dismissed. For advancing such unilateral reasons without due consideration of the law of hardship and inconvenience to the Applicant – wife as envisaged under Section 24 of the CPC, I am inclined to levy costs on the Respondent. The Respondent is directed to pay costs of Rs.25,000/- to

the Applicant – wife within a period of two weeks from today, failing which the said costs shall be recovered from the Respondent as arrears of land revenue by the Collector Mumbai or MSD as applicable and paid over to the Applicant. Server copy of this order shall be sent to the concerned Collector by the Registry of this Court immediately.

12. The Applicant has made out a clear case for seeking transfer of the Marriage Petition from the Family Court Judge – 3 at Bandra, Mumbai to the Family Court No.2 at Nagpur.

13. In view of my above observations and findings, MCA stands allowed in terms of prayer clause (I) which reads thus:

“(I) allow the present application and direct the transfer of petition A/2306/2022 (Mayur Hirlekar Vs Priyanka Hirlekar) from the file of the learned Family Court Judge —3 at Bandra, Mumbai, to the file of the learned judge Family Court No.2 at NAGPUR, in the interest of justice.”

14. With the above directions, MCA is allowed and disposed.

[MILIND N. JADHAV, J.]

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