

Ajay

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

MISC. CIVIL APPLICATION NO.252 OF 2024

Sarita Rahul Sharma
@ Sarita Santosh Nai

.. Applicant

Versus

Rahul Udayraj Sharma

.. Respondent

-
- Ms. Nazneen Contractor i./by Mr. Kripashankar Pandey, Advocate for Applicant.
 - Mr. R.S. Tripathi i./by Mr. Mohd. Shahid, Advocates for Respondent.
-

CORAM : MILIND N. JADHAV, J.

DATE : OCTOBER 03, 2024.

JUDGMENT:

1. Heard Ms. Contractor, learned Advocate for Applicant and Mr. Tripathi, learned Advocate for Respondent.

2. This Miscellaneous Civil Application (for short “MCA”) is filed by Applicant – wife seeking transfer of Marriage Petition No.11 of 2024 filed by Respondent – husband in the Court of Civil Judge Senior Division, Vasai to the Family Court at Bandra, Mumbai.

3. Applicant - wife is a resident of Mahim where she is residing with her retired father, homemaker mother and two unmarried brothers alongwith her minor son. The son is 15 months old and she is required to provide care and support for him. Presently, the expenses

of the Applicant - wife and her infant / minor son are borne by her father and brothers.

4. Ms. Contractor, learned Advocate for the Applicant - wife has taken me through the averments and pleadings made in the MCA and would contend that Applicant - wife is facing severe difficulty to travel from Mahim to attend the Marriage Petition proceedings in Vasai Court she spends 8 hours on an average for the traversing the distance. She would submit that it is impossible for the Applicant- wife to leave her infant / minor son at home and she is required to carry him alongwith her. She would submit that the said infant / minor son of the Applicant- wife was born prematurely, he is still bodily weak and requires regular and constant medication including substantial costs. In support of this submission, she has drawn my attention to the medical papers appended at Exhibit "C" collectively from page Nos.54 to 71 and after perusing the same, the case of Applicant- wife put forward by her Advocate cannot be disbelieved.

4.1. She would submit that Applicant's mother is old and does not keep good health, resultantly she is not in a position to provide care and support to Applicant's minor son, if he is left behind. In this regard, the medical papers of Applicant's mother have also been appended at Exhibit "D" collectively from page Nos.72 to 85. She would submit that for the Applicant, travelling all the way to Vasai

Court is extremely difficult and traumatic.

4.2. She would submit that Applicant - wife has filed FIR under Section 498-A readwith other offences of Indian Penal Code, 1860 against Respondent - husband and his family members, *inter alia*, seeking return of her *streedhan* and articles, which is pending trial. She would submit that Respondent – husband and his family members have obtained anticipatory bail in that case.

4.3. Finally, she would submit that being completely helpless, Applicant- wife filed Petition No.E-324 of 2022 in the Family Court at Bandra, Mumbai *inter alia*, seeking maintenance as she has severe financial constraints to provide for herself and her infant / minor son. Hence, she would submit that this Court be pleased to allow the present MCA in the interest of justice.

5. *PER CONTRA*, Mr. Tripathi, learned Advocate for Respondent – husband would vehemently oppose the present MCA on the ground that Applicant- wife can very well undertake the journey to Vasai which she has been attending till now and if so required, Respondent - husband would be ready and willing to bear the expenses that would be incurred by her to undertake and traverse the said distance. In the course of his reply, this Court has found that submissions advanced by Mr. Tripathi are utterly insensitive and inhumane *qua* the facts in the present case.

5.1. He has placed reliance on a decision of the Supreme Court in the case of *Shiv Kumari Devendra Ojha Vs. Ramajor Shitla Prasad Ojha & Ors.*¹ and would contend that in that case the Supreme Court had rejected a similar plea of the Applicant therein seeking transfer of Succession Application when the other party had agreed to bear expenditure of travel and stay of the Applicant whenever she attended the Court. He would submit that in the present case, Respondent – husband is agreeable to bear the travel costs of the Applicant – wife and therefore the said ratio be applied in the present case.

6. At the outset, I need to deal with this proposition which is vehemently argued by Mr. Tripathi for seeking rejection of the MCA. The cited case under reference was in respect of transfer of a Succession Application alongwith Miscellaneous Application pending in the Court of Civil Judge Senior Division, Valsad to the Civil Court in District Pratapgarh, Uttar Pradesh. It is seen that the facts in that case are entirely different from the facts in the present case. So also, the circumstances. In that case the only grievance of the Applicant was that she had great difficulty to meet the expenditure for travel from Uttar Pradesh to Valsad in Gujarat and under those circumstances the Supreme Court found that there was no justification for transferring the matter to Uttar Pradesh. The Supreme Court therefore determined

¹ AIR 1997 SC 1036

and fixed an amount to be paid to the Applicant therein on each occasion in advance to enable her to travel and on that ground her transfer Application was rejected.

6.1. Such is not the case herein. This is a matrimonial dispute between husband and wife. The wife is having one infant / minor son to provide care and support including his medical needs. The Respondent – husband has not paid / is not paying a single farthing to redress and ameliorate the difficulty faced by the Applicant – wife. That apart, to travel from Mahim to the Vasai Court would require the Applicant - wife to undertake the arduous journey in the local train from Mahim to Vasai Road Station, thereafter alight at Vasai Road Station and go to Vasai Road bus stand to take a bus to the Vasai Court which is situated in the interior at a distance of 6.7 kms. and would have to undertake the same journey while returning back from Vasai Court to her residence at Mahim. If Applicant - wife has to travel alongwith her infant / minor son, it would be all the more difficult for her to travel, since boarding and alighting from the local train on the western railway corridor at any given time during the day is an extremely difficult proposition considering that trains are overcrowded at all times. While undertaking the train journey, Applicant - wife would have to take care of her infact / minor son which would add to her degree of difficulty. That apart, from Vasai Road bus station to the Court and back, there are only two modes of public transport available

namely the MSRTC buses which are always overcrowded and in the alternate auto-rickshaws which ply the said distance at an exorbitant cost.

6.2. In that view of the matter there is no comparison for applying the ratio of the Supreme Court in the case of *Shiv Kumari Devendra Ojha (first supra)* to the present case even if the husband agrees to bear the expenditure of travel of the Applicant – wife which is of no solace to her. Hence, the ratio of that decision cannot be *ipso facto* applied to the present case.

7. Next, Mr. Tripathi has placed a decision of this Court passed by learned Single Judge (Coram: S. B. Shukre, J) in the case of *Supriya Vs. Kamlesh*² to contend that lack of funds and inconvenience by itself cannot be sufficient grounds for allowing transfer of proceedings. I have perused the said decision. It is seen that in the said case, the husband was suffering from a medical ailment and that was one of the reasons which persuaded the Court to reject the MCA filed by the Applicant – wife therein. However, as narrated hereinabove, the facts in the present case are completely dissimilar to the facts in the case of *Supriya (second supra)* which is relied upon by Mr. Tripathi.

8. In the present case it is seen that the Respondent – husband is having three salons in Vasai and is rather earning very well.

² 2017 (5) Mh.L.J. 642

Financially, Respondent - husband is therefore well off. Merely due to that reason, Respondent - husband cannot insist that he will bear the travel cost of the Applicant – wife to attend the proceedings in Marriage Petition in Vasai. The submission made by Mr. Tripathi is without consideration of the Applicant's case altogether. Not once has Mr. Tripathi considered the fact that the Applicant - wife is required to support and care for her 15 month old infant / minor son and if she is to attend the proceedings in Vasai Court, how and who would take care of the child in her absence.

9. In paragraph No.14 of the MCA, it is categorically stated by the Applicant that when she has travelled to Vasai in the past, she has spent 8 hours to and fro alongwith her minor son who keeps on crying and when that happens it is very difficult to manage. It is also pleaded by Applicant - wife that requiring her to travel along with her minor son to the Vasai Court situated in the interior parts is an unsafe proposition. She would submit that there would be no prejudice and difficulty caused to the Respondent – husband if he is to attend the proceedings in the Family Court at Bandra as against the difficulty raised by Applicant – wife.

10. In view of the above averments made in the MCA and the facts and circumstances in the present case, the ratio in the case of *N.C.V. Aishwarya Vs. A.S. Saravana Karthik Sha*³ as enumerated in

³ AIR 2022 SC 4318

paragraph Nos.9 and 10 has to be applied to the present case in favour of the Applicant- wife. The principles laid down therein with respect to matrimonial matters that whenever 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 squarely apply to the present case. The said principles squarely apply in favour of allowing the present MCA. As held by the Supreme Court, given the socio-economic paradigm in the Indian society, the inconvenience caused to the wife must be looked at whenever confronted with such an application for transfer.

11. I uphold all submissions made by Ms. Contractor, learned Advocate for the Applicant – wife before me, as inconvenience caused to the Applicant - wife in the above facts of the present case is clearly evident and cannot be disregarded by the Court. Submissions made on behalf of Respondent – husband by Mr. Tripathi are rejected. Without even filing Affidavit-in-Reply to the MCA, Advocate for Respondent has successfully protracted the present MCA since April 2024. Even while conducting the matter before me, Advocate for Respondent – husband was not fair in making his submissions *qua* the facts of the present case

on the ground of hardship.

12. What is crucial is that the Applicant – wife due to her infant / minor son is undoubtedly faced with severe hardship on all counts at present. By not transferring the Application, we cannot add to the difficulty and woes of the Applicant – wife. The present MCA therefore deserves to be allowed immediately without any further delay. MCA therefore stands allowed in terms of prayer clause ‘a’ which reads thus:-

“(a)That this Hon’ble Court may be pleased to transfer the marriage Petition No.11/2024 filed y/s 13(1), (i) (ia) of Hindu Marriage Act – 1955 filed and pending before the Court of Hon’ble 2nd Joint Civil Judge Senior Division at Vasai to the Hon’ble Family Court at Bandra, Mumbai.”

13. Considering that the Respondent – husband’s Advocate has argued the present MCA for a considerable length of time without even filing his Affidavit-in-Reply despite having been served as far back as in July 2024, I am not inclined to accept the submissions made by Mr. Tripathi that the matter was referred to mediation in the interregnum and therefore the reply could not be filed. It is seen that Applicant – wife is a single mother requiring to take care of her infant / minor son who is born pre-term and is therefore facing constant health issues. The well-being of the son should undoubtedly be at the forefront and of paramount importance for the parents. However in the present case the entire responsibility is on the Applicant – mother and the

Respondent – father has completely exonerated himself of his duty as a parent to the detriment of the mother and child. I can see no remorse or sympathy in the submissions made by Mr. Tripathi in the present case.

14. Hence, in view of the above reasons, as also the fact that the Respondent - husband has vehemently contested this Application through his Advocate without even filing any Affidavit-in-Reply whatsoever, I am inclined to levy exemplary costs on the Respondent – husband of Rs.1,00,000/- to be paid to the Applicant – wife, who in my opinion has clearly endured suffering for the last 21 months from the date of birth of her son and further more from the date of filing of the Marriage Petition by the Respondent - husband in the Court of Civil Judge Senior Division, Vasai seeking a decree of divorce under Section 13(1)(i) and or Section 13(1)(ia) of the Hindu Marriage Act, 1955. In my opinion, Applicant – wife deserves the award of costs as it would go a long way in ameliorating her hardship and difficulty in the interest of justice.

15. Costs as directed shall be paid by Respondent – husband to Applicant – wife within a period of two weeks from today. If the costs are not paid, the same shall be recovered as arrears of land revenue by the Collector, Palghar and paid over to the Applicant – wife. A copy of the receipt / acknowledgment of payment of costs shall be placed

before the Transferee Court by the Respondent – husband.

16. All concerned shall act on a server copy of this order.

17. With the above directions, MCA stands allowed and disposed.

[MILIND N. JADHAV, J.]

Ajay

HARSHADA
HANUMANT
SAWANT

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