

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISCELLANEOUS CIVIL APPLICATION NO.295 OF 2024

Shruti Pathak Bharadwaj

.. Applicant

Versus

Raushan Bharadwaj and Ors.

.. Respondents

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- Ms. Rupa Prajapati i./by Raghava M., Advocate for Applicant.
- Ms. Kalyani Mangave, Advocate for Respondents.

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CORAM : MILIND N. JADHAV, J.

DATE : OCTOBER 03, 2024

P.C.:

1. Heard Ms. Prajapati, learned Advocate for Applicant and Ms. Mangave, learned Advocate for Respondents.

2. On 29.08.2024 after hearing both the learned Advocates, following order was passed:-

“1. Heard Ms. Prajapati, learned Advocate for Applicants and Ms. Mangave, learned Advocate for Respondents.

2. Present Misc. Civil Application (MCA) seeks transfer of DV case i.e. PWDVA 106/2023 filed before the JMFC, Cantonment Court, Pune under the provisions of the Domestic Violence Act, 2005 to Belapur Adtl. District Court, Thane. Application narrates various instances resultant leading to filing of the DV Act proceedings. Applicant is employed as Assistant Branch Manager in the bank and posted at Ulwe Branch which is near Belapur and hence she seeks the transfer of the proceedings to Belapur. Apart from proximity of distance, hardship of the Applicant is evident on reading the Application as also the grounds as she also has to take care and support a minor child.

3. PER CONTRA, Ms. Mangave would submit that she has received papers today and has instructions to appear in the matter. She has persuaded the Court to give Respondent sometime to file affidavit in reply and raise objection against transfer of the DV Act proceedings. She would submit that Respondent Nos. 2 and 3 are parents of Respondent No. 1 and therefore she would like to take appropriate instructions regarding their difficulty and thereafter make submissions.

*4. At her request, stand over to **6th September, 2024**. In the meanwhile, Respondents are directed to file affidavit in reply if they so de-*

sire failing which this Court shall not await for their response and decide the present MCA finally on the next adjourned date in accordance with law.”

3. Today, I am required to hear Ms. Mangave, learned Advocate for Respondents. Respondents are the husband and his parents. As noted in the previous order, Respondent No.1 – husband is in Telangana and serving in job over there whereas Respondent Nos.2 and 3 are of old age and are leading a retired life in District – Motihari, Bihar. Ms. Mangave, draws my attention to the Affidavit-in-Reply dated 24.09.2024 and would persuade me to consider the submissions and objections stated therein. She would submit that the approach of the Applicant – wife in filing the present Miscellaneous Civil Application (for short ‘**MCA**’) after a hiatus of 7 months seeking transfer of her own proceedings filed under the Protection of Women from Domestic Violence Act, 2005 (for short ‘**the D.V. Act**’) is clearly to protract and harass the Respondents. She would submit that Respondent No.1 has filed an Application seeking visitation rights to their daughter on 27.02.2024 and for the past eight months, the said Application is merely pending. She would persuade the Court to understand the travails of a biological father and would submit that the Applicant herself has residential property in Pune where she can undoubtedly reside if she is required to travel to Pune to prosecute her proceedings under the D.V. Act. I have considered the submissions made by Ms. Mangave, learned Advocate for Respondents and also

taken cognizance of the fact that Respondent Nos.2 and 3 are old and aged parents of Respondent No.1 and they would undoubtedly have a substantial degree of difficulty if they are required to travel all the way to Bihar to attend proceedings in Belapur.

4. After hearing both the learned Advocates for the respective parties and perusing the pleadings, it is seen that the difficulty that would be encountered by Applicant – wife would far outweigh the submissions made on behalf of the Respondents. It is seen that Applicant – wife is working as an Assistant Branch Manager in Karnataka Bank Limited and is presently posted in its Ulwe Branch which is close to Belapur. She is residing alongwith her parents in Ulwe. Apart from the proximity of distance that the Applicant would have to traverse to Pune to prosecute her own proceeding under the D.V. Act, the fact that she has to provide care, support and nurture her three year old daughter would undoubtedly relate to substantial hardship to her. Supreme Court in the case of **N.C.V. Aishwarya Vs. A. S. Saravana Karthik Sha**¹ has laid down certain principles which are required to be considered by the Court when faced with such an Application for transfer in matrimonial matters. Though the Applicant seeks transfer of her own proceeding filed under the D.V. Act, the submissions made on behalf of Respondents to reject the MCA cannot be countenanced, as requiring the Applicant to travel to Pune would

¹ AIR 2022 SC 4318

undoubtedly cause her inconvenience and hardship. Needless to state that the difficulty and hardship expressed by Ms. Mangave also will have to be considered. In view of my above observations, the MCA deserves to be allowed and it therefore stands allowed in terms of prayer clause (a) which reads thus:-

“a) This Hon’ble Court may be pleased to pass an order transferring the DV case i.e PWDVA 106 / 2023 of JMFC, Cantonment Court Pune to Belapur Add. District Court, Thane.”

5. In addition to the above order, I direct that once the proceeding stands transferred, the Court of Judicial Magistrate First Class, Belapur (for short ‘**JMFC, Belapur**’) shall hear the Interim Application filed below Exhibit-26 in the said D.V. Act proceeding immediately. Ms. Mangave informs the Court that since the Application has been filed in the month of February-2024, till date the Applicant – wife is playing truant and delaying filing of any Affidavit-in-Reply thereby causing severe prejudice and trauma to the Respondent No.1. She would submit that even otherwise Respondent No.1 is residing in Telangana, but he is longing to and desires to come and visit his daughter for which he has filed the Application, but the same has remained pending since long. The concerns of Respondent No.1 father are required to be taken care of in these facts. The Applicant – wife who is Respondent in the Application filed below Exhibit-26 is directed to file her Reply within a period of two weeks

from today and serve a copy of the same on the Respondent No.1. If the said Reply is not filed, the learned Court of JMFC, Belapur is directed to hear the Application filed below Exhibit-26 as it is and pass appropriate interlocutory order therein in accordance with law. Learned Court of JMFC, Belapur shall determine and decide the Application filed below Exhibit-26 within a period of four weeks from today by passing a speaking order.

6. Ms. Prajapati, learned Advocate for Applicant raises a grave apprehension that the above order should come into force only after the transfer takes place. In that view of the matter, I direct the Court of Judicial Magistrate First Class, Cantonment Court, Pune (for short '**JMFC, Cantonment Court, Pune**') to act immediately on a server copy of this order and ensure that the papers are sent to the Court of JMFC, Belapur within a period of one week from the date of presentation of a server copy of this order. The said Court of JMFC, Cantonment Court, Pune shall not insist on a certified copy of this order and act immediately as directed on the basis of a server copy of this order and ensure that the papers are sent immediately to the Court of JMFC, Belapur. The Court of JMFC, Belapur is equally directed that re-registration of the proceeding shall take place within a period of two days from the date on which it receives the papers from the Court of JMFC, Cantonment Court, Pune. The aforesaid timeline shall not be confused or interpolated with the timeline to the parties namely the

Applicant to file the Reply. Parties to strictly adhere to the above timeline. The Court of JMFC, Belapur shall pass orders strictly in accordance with law after hearing both the parties.

7. In so far Respondent Nos. 1 to 3 are concerned, considering that they are presently at Telangana and Bihar, the learned Court of JMFC, Belapur shall permit the Respondent Nos.1 to 3 to appear through Video Conferencing in the proceedings including the Application filed below Exhibit-26.

8. Another grievance expressed by Ms. Mangave, learned Advocate for Respondent No.1 is that the father of the Applicant –wife is an Assistant Commander in the Central Reserve Police Force (for short ‘C.R.P.F.’) and posted in Navi Mumbai. She would submit that in the past, Respondent No.1 has received threats from him and Respondent No.1 has filed a complaint in the Kondhwa Police Station, Pune in that regard. She would submit that there is an imminent threat to the life and limb of Respondent No.1. In so far as this issue is concerned, Respondent No.1 has already been permitted by this Court to appear through Video Conferencing. That apart, if there is any further threat received by Respondent No.1, Respondent No.1 shall be free to approach the law enforcement agencies and file an appropriate complaint in accordance with law and if any such complaint is filed by him, the said law enforcement agencies shall take due cognizance of the complaint and

deal with it strictly in accordance with law.

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

H. H. SAWANT

[MILIND N. JADHAV, J.]

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