

Talwalkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO. 371 OF 2024

Mrs. Minaxi Rohit Biradar alias Minaxi Sadashiv
Muchandi

.. Applicant

Versus

Mr. Rohit Bhimashankar Biradar.

.. Respondent

-
- Mr. Shashank Shubham i/b. Bhavesh Kadam, Advocate for Applicant.
 - Mr. Pradip Chavan, a/w. Ms. Shweta Borhade i/b. Pradip Chavan & Associates, Advocate for Respondent.
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CORAM : MILIND N. JADHAV, J.

DATE : AUGUST 30, 2024.

ORAL JUDGMENT:

1. Heard Mr. Shubham, learned Advocate for Applicant and Mr. Pradip Chavan, learned Advocate for Respondent.

2. This Application was heard by me on 16th August 2024 and the following order was passed :

"1. Heard Mr. Jadhav, learned Advocate for the Applicant and Mr. Chavan, learned Advocate for the Respondent.

2. The Applicant is directed to serve a copy of the Application on the Advocate for the Respondent. The copy is given to him in my presence in the Court.

3. A grievance is expressed by the learned Advocate for the Respondent that though transfer by the Applicant is sought to Pune from the Family Court at

Bandra, it is sought on the basis that the Applicant is having her job at Pune even though the Headquarter of her company is at Vikroli. I have impressed upon learned Advocate for the Applicant to place on record the details about Applicant's job profile and working at Pune and for how long she will be stationed in Pune. This is only to ensure that it should not happen in the immediate future that after she gets re-transferred back to Mumbai, she makes another application for seeking transfer of the proceedings to Mumbai.

4. Since, this is the apprehension expressed by the Advocate for the Respondent, the Applicant is directed by this Court for answer the same. Equally, Respondent shall be at liberty to file affidavit-in-reply with objections, if so desired and the same shall be considered by the Court on the next adjourned date.

5. Stand over to 23rd August, 2024."

3. In compliance of the above order, learned Advocate for Applicant has placed before me a letter issued by the Head of Human Resources of the Employer Company wherein the Applicant is employed. It states that with effect from 1st August 2024, the appointment of the Applicant in the Pune office stands confirmed. The letter head also bears the office addresses of the Company at Mumbai as also Pune. The said letter is taken on record and marked "X" for identification.

4. I have heard the learned Advocates appearing for the parties and perused the pleadings.

5. The present Application seeks transfer of Marriage Petition

bearing No. A-85 of 2024 filed by the Respondent Husband from the Family Court, Bandra, Mumbai to the Court of Civil Judge, Senior Division, Pune which is the correct jurisdictional Court according to the Applicant. Apart from the proximity of distance between the two destinations, the grounds enumerated by the Applicant in the Application clearly make out a case with respect to convenience of the Applicant. The Applicant's parents reside in Sangli, whereas she has been transferred to Pune and is working in an IT Company's branch office in Pune. The grounds enumerated in paragraph Nos. 3, 4 and 5 have been considered by me. The convenience of the Applicant in the present case who is the wife is of paramount consideration and importance in the facts of the case. This is so because, learned Advocate appearing for Respondent has filed Affidavit-in-reply dated 19th August 2024 and has vehemently opposed the Application for transfer.

6. According to Respondent, this is not a fit case for transfer in view of the fact that the Application seeking transfer has been filed by Applicant merely to frustrate the pending Marriage Petition instituted by Respondent. It is contended by learned Advocate appearing for Respondent that the letter of employment which has been placed before the Court today by Applicant does not state that the Applicant has been transferred permanently to the branch in Pune. In so far as

this submission is concerned, the letter issued by the employer Company of Applicant is in respect of her employment location changed to Pune and about the status of her appointment, which is confirmed by her employer. Hence, the submission of Respondent cannot be countenanced. The other submissions which the learned Advocate for the Respondent has made are that the Applicant has lived and worked in Mumbai and also regularly travels to Mumbai to attend to her office commitments and in that view of the matter being well versed, she can attend court proceedings in Mumbai and therefore, the Application ought not to be allowed.

7. In support of Respondent's submissions, reliance is placed on the following two decisions of the Supreme Court.

(i) *Anindita Das Vs. Srijit Das*¹

(ii) *Delma Lubna Coelho Vs. Edmond Clint Fernandes*.²

8. On the basis of the aforesaid two decisions of the Supreme Court it is argued that the observations made by the Supreme Court in paragraph-7 of the first decision and paragraph-18 of the second decision be considered by Court to reject the Application. The observations in both the paragraphs is identical. The Supreme Court has in fact passed an obiter by making an observation that a number of

1 (2006) 9 SCC 197.

2 AIR 2023 SC 2106.

transfer Petitions are filed in matrimonial cases primarily by wives seeking transfer of matrimonial proceedings initiated by their husbands and the Court normally has been accepting the prayer made while showing leniency towards ladies. Learned Advocate for the Respondent has persuaded me to consider this observation of the Supreme Court. I have already stated that this is an obiter and it is not a *ratio decidendi*. I say this because what is stated immediately next in the very same paragraph by the Supreme Court is important. It is stated that each and every case will therefore have to be considered on its own merits. In that view of the matter, the aforesaid observation of the Supreme Court cannot be considered as an adage or ratio as facts of the case have to be considered. It cannot be *ipso facto* applied to the facts of the present case. In so far as the facts of the twin cases relied upon by the Respondent are concerned, I have perused them and they are completely different. They do not even remotely come close to the facts in the present case in question. That apart what is important to be noted is the power of the Court under Section 24 of the Code of Civil Procedure, 1908 (for short "CPC") to grant transfer of an application which has been explained by the Supreme Court in its decision in the case of ***N.C.V. Aishwarya Vs. A.S. Saravana Karthik Sha***³ in paragraphs 9 to 12 thereof. For reference and convenience, said paragraphs are reproduced below :

3 AIR 2022 SC 4318

"9. The cardinal principle for exercise of power under [Section 24](#) of the Code of Civil Procedure is that the ends of justice should demand the transfer of the suit, appeal or other proceeding. In matrimonial matters, wherever Courts are called upon to consider the plea of transfer, the 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 to life. Given the prevailing socio-economic paradigm in the Indian society, generally, it is the wife's convenience which must be looked at while considering transfer.

10. Further, when two or more proceedings are pending in different Courts between the same parties which raise common question of fact and law, and when the decisions in the cases are interdependent, it is desirable that they should be tried together by the same Judge so as to avoid multiplicity in trial of the same issues and conflict of decisions.

11. As noticed above, the appellant is a young lady aged about 21 years, staying alone along with her aged parents. Under the above circumstances, it is difficult for her to travel all the way from Chennai to Vellore to attend the court proceedings of the case filed by the respondent seeking annulment of marriage. Further, it is also just and proper to club all the three cases together to avoid multiplicity of the proceedings and conflict of decisions. Therefore, the High Court was not justified in rejecting

transfer petition bearing TR.C.M.P.No.473 of 2020, filed by the appellant herein."

9. From the above it is clearly seen that the power under Section 24 of the CPC is to be employed to meet the ends of justice qua the demand for transfer of proceedings and more specifically in matrimonial matters when Courts are called upon to consider the plea for transfer on the basis of application of an array of factors as stated therein which are required to be considered. In the present case, it is seen that the Applicant is residing alone in Pune. She may have the benefit of her parent's company intermittently who are residing in Sangli to give her moral support. Convenience of the wife not only from the point of view of proximity of distance between the two destinations but also to the extent of where the Applicant shall stay in Mumbai when she attends court proceedings will have to be seen and also considered. This is because the Supreme Court has observed in the aforesaid decision of *N.C.V. Aishwarya(1st supra)* that given the prevailing socio-economic paradigm in the Indian society, generally, it is the wife's convenience which must be looked at while considering transfer. Some of the facts which are mentioned in the Application which I do not wish to narrate, clearly show that the treatment meted out to the wife by the Respondent is something which needs to be considered *prima facie* for allowing the transfer. This is only because this Court does not wish to give any imprimatur in so far as those facts

are concerned as they will be argued in the Marriage Petition, but it is true that the wife does not have any place to stay in Mumbai in the present case.

10. In view of the above observations and findings, I am not inclined to accept the submissions made by the learned Advocate for Respondent. Submissions of Respondent are required to be dismissed comprehensively on the face of the Affidavit-in-reply which has been filed as they do not countenance any merit whatsoever in the present case.

11. In view of the above, the Application stands allowed in terms of prayer clause (a) which reads thus :

a] This Hon'ble Court may be pleased to pass an order/direction thereby transferring Petition A bearing No. 85 of 2024, filed by the Respondent for Dissolution of Marriage before the Family Court, Bandra to the Family Court, Pune.

12. Misc. Civil Application is allowed and disposed.

[MILIND N. JADHAV, J.]

Talwalkar

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SANDEEP
TALWALKAR

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ARUNA SANDEEP
TALWALKAR
Date: 2024.09.02
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