



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

MISCELLANEOUS CIVIL APPLICATION NO.310 OF 2022

MRS.PRIYANKA RAHUL PATIL)
Age : 32 years, Occupation : Nil,)
R/o. Lane No.12, Dongare Building,)
Jaysingpur, Taluka Shirol, District Kolhapur)...APPLICANT

V/s.

RAHUL RAVINDRA PATIL)
Age : 34 years, Occupation : Service)
R/o. Flat No.5, Rajmudra Apartment,)
Near Vikrikar Nagar, Hanuman Nagar,)
Pathardi Phata, Nashik.)...RESPONDENT

Mr.Akshay Kulkarni, Advocate for the Applicant.

Mr.Shrikant Bhilare i/by Meraki Legal, Advocate for the Respondent.

CORAM : ABHAY AHUJA, J.

DATE : 15th SEPTEMBER 2023

ORAL JUDGMENT :

1. This is an Application seeking transfer of Divorce proceedings filed by the Respondent-husband for dissolution of marriage before the Family Court at Nashik to the Civil Judge Senior Division, Jaysingpur, District Kolhapur.

2. Mr.Akshay Kulkarni, learned Counsel for the Applicant-wife, submits that the marriage between the Applicant-wife and Respondent-

husband was solemnized on 29th November 2012 at Ankali, Taluka Miraj, District Sangli. That, after marriage, the Applicant-wife and Respondent-husband started cohabiting at the Applicant's matrimonial home at Nashik. It is submitted that on 19th November 2013 a girl child was born out of the wedlock. That, on 27th October 2015, the Applicant-wife was diagnosed with Type 1 Diabetes and that the Applicant-wife was required to take insulin everyday. It is submitted that during the period from the date of solemnization of the marriage till 2nd June 2018, there were several quarrels between the Applicant-wife and the Respondent-husband and finally on 2nd June 2018, the Applicant-wife left the matrimonial home and came to stay with her parents at Jaysingpur at her parental home.

3. Thereafter, on 21st August 2019, the Applicant-wife filed proceedings under the Protection of Women from Domestic Violence Act, 2005, before the Judicial Magistrate First Class Court (JMFC) at Jaysingpur for maintenance. The Respondent-husband filed a reply in the said proceedings. After hearing the parties, the JMFC Court has awarded monthly maintenance of Rs.10,000/- for the daughter and a maintenance of Rs.3,000/- for the Applicant-wife, which was until April 2020. That, on 23rd March 2022, the Respondent-husband has filed

Divorce proceedings for dissolution of the marriage between the Applicant-wife and Respondent-husband before the Family Court at Nashik.

4. Mr.Kulkarni, learned Counsel for the Applicant-wife, would submit that soon after receipt of the summons, the Applicant-wife has filed this Miscellaneous Civil Application on 13th July 2022 seeking transfer of the Divorce proceedings from the Family Court Nashik to the Court of Civil Judge Senior Division, Jaysingpur.

5. Mr.Kulkarni would submit that the Applicant-wife is residing with her school going daughter and old parents at Jaysingpur. He would submit that although the Applicant-wife is qualified as a Bachelor of Engineering, as of now, she is only looking after her daughter and aged parents and is neither employed nor engaged in any professional work. He would submit that she is dependent on her parents for her sustenance. Learned Counsel would submit that the Applicant-wife is diabetic, which has been admitted by the Respondent-husband in the Domestic Violence proceedings as well as in the reply filed to this Application. That, the distance between Nashik and Jaysingpur is 468 kilometers one way and it would take three days for her to go and

come from Nashik. Besides, considering her diabetic condition, she cannot travel alone and has no one to travel with her to Nashik. Additionally, as stated earlier, she also has her responsibility towards her daughter and old parents. The Court of Civil Judge Senior Division at Jaysingpur is ten kilometers away from where she is staying at her parental home. Therefore, the Applicant-wife would not only be inconvenienced by travelling to and fro from Jaysingpur to Nashik but the said travel would also cause undue hardship to her. On the other hand, the Respondent-husband is a Senior Government Officer, having all resources at his disposal to travel to Jaysingpur. Therefore, no such inconvenience would be caused to the Respondent-husband if he has to come to Jaysingpur. Learned Counsel would submit that proceedings before the Nashik Court are at the stage of appearance and counselling.

6. Mr.Kulkarni for the Applicant-wife has relied upon the decision of this Court in the case of *Devika Dhiraj Patil nee Devika Jayprakash Buttepatil vs. Dhiraj Sunil Patil*¹ in support of his contentions. Learned Counsel draws the attention of this Court to paragraphs 9 and 10 of the said decision to submit that even if the Respondent was to pay for the expenses of travel as well as lodging and boarding, that would still not

¹ Miscellaneous Civil Application No.167 of 2023 decided on 8th September 2023

be sufficient in as much as the convenience of the wife is to be preferred over the convenience of the husband. Learned Counsel, therefore, submits that the Application be allowed as prayed for.

7. On the other hand, Mr. Bhilare, learned Counsel for the Respondent-husband, opposes the Application. Learned Counsel relies on the reply dated 12th August 2022 filed on behalf of the Respondent-husband. Learned Counsel would submit that the diabetic condition of the Applicant-wife is not a serious one and that the Applicant-wife has been attending the Domestic Violence proceedings at Jaysingpur. Learned Counsel would submit that though the Applicant-wife had shown inclination for restitution of conjugal rights but not even once has attended the counselling before the Nashik Court. That, this itself shows her conduct. Learned Counsel would submit that the Respondent-husband is a Senior Government Officer and it is not possible for him to get leave to attend the proceedings and come to Jaysingpur all the way, every time the matter is listed. He would submit that no prejudice would be caused to the Applicant-wife if the Divorce proceedings are not transferred as she would not be required to attend the Divorce proceedings in Nashik on every date. The applicant-wife can on those dates also attend through video conferencing. He would

further submit that he has instructions to state that the Respondent-husband would pay for her travelling expenses to Nashik and also make arrangements for accommodation at Nashik for the hearings there. Learned Counsel refers to the following decisions of the Hon'ble Supreme Court :

(i) *Preeti Sharma vs. Manjit Sharma*²

(ii) *Reema Sethi vs. Deepak Sethi*³

Relying upon these decisions, learned Counsel would submit that this Court dismiss the Application, in as much as, the Respondent-husband is willing to pay all the travel and stay expenses on every occasion when the Applicant-wife would be required to go to Nashik.

8. After concluding his submissions, learned Counsel submits that in the event this Court is inclined to allow the Application, his client be permitted to appear through video conferencing facility, in the event his physical presence is not required in the Court at Jaysingpur.

9. I have heard Mr.Akshay Kulkarni, learned Counsel for the Applicant and Mr.Shrikant Bhilare, learned Counsel for the Respondent and also considered the rival submissions.

² (2005) 11 Supreme Court Cases 535

³ (2005) 11 Supreme Court Cases 568

10. The Hon'ble Supreme Court in the case of ***N.C.V. Aishwarya Vs. A.S. Saravana Karthik Sha***⁴ has clearly held that in matters where matrimonial proceedings come up for consideration under Section 24 of the Code of Civil Procedure, 1908, (CPC) ends of justice would be met if the convenience of the wife is taken into consideration.

Paragraph No. 9 of the said decision is usefully quoted as under :-

“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 behavioral 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 like. 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.”

(Emphasis Supplied)

11. Also, in the case of ***Rajani Kishor Pardeshi V/s. Kishor Babulal Pardeshi***⁵, the Hon'ble Apex Court while considering the argument of the husband opposing the transfer on the ground that it was equally inconvenient for him to go to Satana and that he would be willing to

4 SCC Online SC 1199 (2022)

5 2005 (12) SCC 237

pay the expenses for the wife's travel to Mumbai, the Hon'ble Supreme Court held that in these type of matters, the convenience of the wife should be preferred over the convenience of the husband and accordingly transferred the proceedings pending before Mumbai Court to the Family Court at Satana, Madhya Pradesh. Paragraphs 3 and 4 of the said decision are usefully quoted as under :

“3. The husband opposes the transfer on the ground that it is equally inconvenient for him to go to Satana and that he is willing to pay the expenses for her travel to Mumbai.

4. In this type of matter, the convenience of the wife is to be preferred over the convenience of the husband. Hindu Marriage Petition No.6 of 2004, Kishor Babulal Pardeshi v. Rajani Kishor Pardeshi pending before the Court of Civil Judge, Senior Division at Panvel, Mumbai, Maharashtra is transferred to the Family Court of proper jurisdiction at Satana, Madhya Pradesh.”

(Emphasis supplied)

12. Following the above decision, this Court in the case of *Devika Dhiraj Patil nee Devika Jayprakash Buttepatil vs. Dhiraj Sunil Patil (supra)* has allowed the transfer of Divorce proceedings filed by the Respondent-husband at Family Court, Nashik to the Family Court, Pune. Paragraph 10 of the said decision is relevant and quoted as under :

“10. It has not been disputed by the respondent that the applicant does not have any other male person in her family other than her father to accompany her to Nashik. Even though she may have travelled to Nashik Court on 7th June,

2023 for the purposes of verifying whether any divorce petition was filed by the respondent, and the Applicant though qualified, is dependent on her father. It is not in dispute that her father had undergone an eye surgery and is on medication and also has been advised surgery for fissure and piles and therefore cannot accompany the applicant to travel to Nashik for the purpose of attending the Court there. Therefore even though the applicant may be having some resources to travel to Nashik, however, considering her father's condition of not being able to accompany her due to his health condition is an important factor to be taken into account while considering the convenience of the wife. In a country like India, important decisions such as marriage, divorce are still taken with the guidance and blessings of elders in the family. For a lady to travel alone for the proceedings to a Court where the fate of her marriage is going to be decided without any family member would definitely be a matter of concern and cause not only physical inconvenience but also emotional and psychological inconvenience. The respondent would also no doubt be undergoing panic and anxiety as referred to in the reply, however, as observed by the Hon'ble Supreme Court in case of Rajani Kishor Pardeshi V/s. Kishor Babulal Pardeshi (supra) that in these type of matters, it is the convenience of the wife that is to be preferred over the convenience of the husband."

13. Therefore, the underlying principle governing the proceedings under Section 24 of the CPC, is that convenience of the wife is to be preferred over the convenience of the husband. In the present case, the Applicant-wife is residing at Jaysingpur, which is 468 kilometers one way from Nashik. It is not in dispute that it would take about three days for her to travel to and fro from Nashik. That, it is also not in dispute that the Applicant-wife is suffering from diabetes and is

required to take insulin everyday. That, she has a ten year old school going child and she also has to look after her aged parents. That, though qualified as an Engineer, she is unemployed and dependent on her parents for her sustenance. Merely because the husband is willing to pay for her travel and stay at Nashik, it cannot be a ground for disallowing this Application. Although, diabetes may not be a serious condition, but the requirement of taking insulin and having a companion to travel is necessary, in as much as in a diabetic condition, a person can become hypoglycemic any time and if there is no companion to take care, it could lead to a fatal situation.

14. Learned Counsel for the Respondent-husband has cited two decisions of the Hon'ble Supreme Court to submit that as long as the travel and stay expenses are paid for, that should be sufficient and the Transfer Application can be rejected. I am afraid that the facts and circumstances in both the decisions relied upon by the learned Counsel for the Respondent-husband are clearly distinguishable. In the case of *Reema Sethi vs. Deepak K. Sethi (supra)*, the only ground made out by the Petitioner-wife was that she was unemployed and had no independent source of income. The facts of the present case are quite different. This is a case where the wife, though a diabetic, owes a duty

to her minor school going daughter as well as to her aged parents apart from the fact that she would have to travel 468 kilometers to and fro in a diabetic condition without a companion. Therefore, the case of *Reema Sethi vs. Deepak K. Sethi (supra)* would not lend assistance to the Respondent-husband.

15. Coming to the decision in the case of *Preeti Sharma vs. Manjit Sharma (supra)* that was also a case of an unemployed lady totally dependent on her uncle who was hard pressed to defend two suits at Muzaffarnagar. As mentioned above, these are not the only facts in the case at hand. The Applicant-wife in the present case owes a duty towards her minor child and aged parents apart from her health condition unlike in the case cited on behalf of the Respondent. Further, in the said decision cited on behalf of the Respondent, the husband was also willing to pay for the Petitioner's companion whereas that is not the offer being made in the present case. In my view, therefore, the decision in the case of *Preeti Sharma vs. Manjit Sharma (supra)* would also not lend any assistance to the case of the Respondent-husband.

16. Having heard the learned Counsel and having considered the facts of this case, in the light of the settled law, this Court is inclined to allow the Application and transfer the Divorce proceedings filed by the

Respondent-husband and pending in Family Court, Nashik to the Court of Civil Judge Senior Division, Jaysingpur.

17. The Application stands allowed in terms of Prayer clause (b) which reads thus :

“To transfer the Hindu Marriage Petition No.A-241 of 2022 filed by the Respondent and pending before the Ld. Family Court Nashik, at Nashik for decree of divorce under Section 13(1)(ia) & 13(1)(ib) of the Hindu Marriage Act, 1955 to the Court of Civil Judge, Senior Division Jaysingpur, at Jaysingpur.”

18. However, considering the arguments of the learned Counsel for the Respondent-husband and the submissions made in the reply that the Respondent-husband, being a Senior Government Officer, it would be difficult for him to take leave every now and then, this Court grants liberty to the Respondent-husband to appear before the Civil Judge Senior Division at Jaysingpur through video conferencing, upon an application made in that behalf to the Court of Civil Judge Senior Division, Jaysingpur, on the dates when his physical presence is not required there.

19. It is made clear that any observations on the merits of the dispute between the parties is only to consider this application which shall not influence the trial or disposal of the Marriage Petition which is to be tried and decided on its own merits uninfluenced by the said observations.

(ABHAY AHUJA, J.)