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Court : Mumbai Aurangabad

Decided On : Jul-16-2013

Judge : S.S. Shinde

Appeal No. : Misc.Civil Application No. 17 of 2013

Appellant : Aruna Gorakhnath Korde

Respondent : Gorakhnath Devidas Korde

Judgement :

Oral Judgment:

1. Rule. Rule made returnable forthwith. With the consent of the parties heard finally.
2. This Miscellaneous Civil Application is filed seeking transfer of Matrimonial proceedings bearing HMP No.57/2012 from the Court of Civil Judge Senior Division, Basmathnagar to the Court of Civil Judge Senior Division, Beed.
3. It is the case of the applicant that applicant wife is the original respondent and respondent is the original petitioner in the divorce proceedings bearing HMP No.57/2012 pending before Civil Judge Senior Division Basmathnagar filed by the respondent seeking dissolution of the marriage between the parties under section 13 (1)(i-a) and (i-b) of Hindu Marriage Act, 1955. The applicant is a teacher and she is residing at her fathers house at Beed.

4. It is further case of the applicant that she has to look after her six months child and it is inconvenient for her to travel from Beed to Basmathnagar to attend the Court proceedings. It is further case of the applicant that the applicant has to take six months maternity leave since delivery was not normal. It is further case of the applicant that since the applicant is working as a teacher at Jamkhed, even after marriage she continued to reside with parents at Beed. However, it is further case of the applicant that frequently she was visiting Basmathnagar. It is further case of the applicant that she has to attend her duties at Jamkhed and thereafter to look after six months child. It is submitted that distance from Beed to Basmath is approximately 195 kilometers and therefore, it is inconvenient for the applicant to travel from Beed to Basmath. Therefore, this application is filed for transfer of the proceedings from Civil Judge Senior Division Basmath to Civil Judge Senior Division, Beed.

5. Learned counsel appearing for the applicant invited my attention to the averments in the application and submitted that since the applicant is residing at Beed with her parents, it is inconvenient for her to attend the proceedings on transfer before the Court at Civil Judge S.D. Beed. Learned counsel also submits that main ground on which the applicant is seeking transfer is that the applicant has to look after six months child. Therefore, relying upon the averments in the application, counsel appearing for the applicant submits that this application may be allowed.

6. On the other hand, learned counsel appearing for the respondent submits that applicant is working at Jamkhed which is about 90 kilometers from her maternal home and if she can travel distance of 180 kilometers every day for job, then it will not be inconvenient for the applicant to travel to Basmat to attend the Court proceedings. It is submitted that, applicant is receiving Rs.24,000/- p.m. salary and therefore, she has no problem to bear expenses of travelling and also expenses on account of medical problem. It is further argued that since distance between Basmathnagar to Beed is 195 kilometers, respondent being teacher, it is difficult for him to travel from Basmathnagar to Beed. Learned counsel for respondent relying upon paragraph no.6 of the affidavit and submitted that respondent has received threats from the relative of the applicant due to filing of divorce petition.

Hence, it is not safe for him to travel to Beed, since there is threat to life of the respondent. Learned counsel also submitted that in case such transfer is allowed, it will cause inconvenience to the respondent. Therefore, relying upon the averments in the affidavit in reply, counsel appearing for the respondent submitted that Misc. Civil application may be rejected.

7. I have given careful consideration to the rival submissions advanced by learned counsel for the parties. Perused averments in the application, annexures thereto and affidavit in reply filed by the respondent. Indisputably, child is six months old and staying with the applicant-mother. Therefore, the applicant has to look after and take care of six months child. Apart from the said ground, the applicant is residing at her parents house at Beed and she has to attend the duty at Jamkhed which is stated to be about 90 kms away from Beed. Though, it is submitted by learned counsel appearing for respondent that there are threats to the life of the respondent, however, nothing has been placed on record to that effect whether any complaint is filed by the respondent. Therefore, if facts of the case are considered in its entirety certainly, balance of convenience would lie in favour of the applicant. In case, proceeding instituted by the respondent/husband are not transferred to the court of Civil Judge Senior Division, Beed from the Court of Civil Judge S.D. Basmathnagar, it will cause great inconvenience to the applicant and ultimately it would affect upon six months old child. In that view of the matter and in view of the Judgment of the Supreme Court in case of Sumita Singh vs. Kumar Sanjay [2001(10) SCC 41] in which it held that, in the proceedings filed by the husband, it is the convenience of the wife that should be looked into. In number of pronouncement of the Supreme Court and also of this Court, the same view is reiterated.

8. In that view of the matter, following order is passed:

Application is allowed in terms of prayer clause C. Proceedings bearing HMP No.57 of 2012 pending before the Civil Judge Senior Division Basmathnagar, District Hingoli shall stand transferred to the Court of Civil Judge Senior Division, Beed. Upon receipt of copy of the order passed by this Court, Registry of the Civil Judge Senior Division shall take immediate steps to transfer the proceedings

within one week.

9. After receiving the proceedings of HMP No. 57/2012, Civil Judge Senior Division Beed shall decide the same as expeditiously as possible, however, within one YEAR from the date of receipt of such proceedings. The concerned Court shall not grant unnecessary adjournments to the parties unless there are genuine reasons for the same; Rule is made absolute in above terms. Application is allowed in above terms and stands disposed of.

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