

Mahadevi Vs. Gopal

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Court : Mumbai Aurangabad

Decided On : Apr-20-2015

Judge : Ravindra V. Ghuge

Appeal No. : Misc. Civil Application No. 103 of 2014

Appellant : Mahadevi

Respondent : Gopal

Advocate for Def. : Mr. T.G. Gaikwad

Judgement :

Per Court:

1. This application is filed under Section 24 of the CPC by the applicant/ wife seeking transfer of H.M.P. No. 163 of 2014 pending before the learned Civil Judge, Senior Division, Latur, to the learned Civil Judge, Senior Division, Ambajogai. The respondent is the husband of the applicant.

2. The parties had got married on 11-03-2012 at Saygaon, Tq. Ambajogai. It is alleged that on account of some ill-treatment and in view of the failure on the part of the applicant to fulfill alleged demands by the respondent/ husband, she was driven out of her matrimonial home by the husband and his close relatives. Since then, applicant resides at Sayagaon, Tq. Ambajogai, Dist. Beed.

3. The applicant has filed two proceedings against the respondent/ husband which are pending before the competent Courts at Ambajogai. Misc. Criminal Application No. 62 of 2014 is preferred by the applicant under the Domestic Violence Act, 2005 and which is pending before the learned Judicial Magistrate, First Class, at Ambajogai. The applicant has also filed a complaint under Section 498-A of the IPC and the said Regular Criminal Case No. 173 of 2014 is pending before the same Court of the learned Judicial Magistrate, First Class, at Ambajogai. The respondent has procured bail and attends both the cases at Ambajogai.

4. This Court had passed the following order dated 04-12-2014:-

1. Mr. T.G. Gaikwad, learned counsel for the respondent states that he was instructed to accept and waive service on behalf of the respondent. He assures that within one week from today, he will file appearance on behalf of the respondent. He further seeks time to file reply.

2. In view thereof, list the application for admission on 05/01/2015. The parties are put to notice that subject to the time constraint and convenience of the Court, application will be disposed of finally at the state of admission.

5. This Court had passed the following order dated 05-01-2015:-

1. This is an application for transfer of matrimonial proceedings at the convenience of wife.

2. After hearing for some time, in response to the query of the Court, both the Counsel agree that matter referred for mediation.

3. Both the parties agree that Advocate Mr. P.R. Patil may be appointed as a Mediator. Mr. P.R. Patil is appointed as Mediator.

4. In view of the above, Registry to refer the matter for mediation.

6. The mediation has failed. According to the learned Advocate for the applicant, the respondent did not even appear on a single occasion before the mediator. The respondent desires to explain the same. However, I have no reason to advert to these conclusions as the fact remains that mediation has failed.

7. The applicant submits that being a lady, makes it difficult for her to travel from Sayagaon to Latur which is distance of about 30 kms. On each visit to Latur she has required to be accompanied by a close relative. The respondent attends two proceedings at Ambajogai and as such H.M.P. No. 163 of 2014 could be transferred from the Latur Court to the Ambajogai Court. All the three proceedings could be posted on the same day for the convenience of both the sides as the applicant would also be required to travel from Sayagaon to Ambajogai and the same is about 20 kms. The applicant is not an educated lady and does not have an independent source of income. His father is an aged ailing person.

8. Shri Gaikwad, learned Advocate appearing on behalf of the respondent / husband has filed an affidavit in reply dated 24-12-2014. It is submitted that no case is made out by the applicant for transfer of proceedings. The respondent resides at Janwal, in Tq. Chakur. He has to travel from Janwal to Latur for the proceedings initiated by him by covering a distance of 35 kms. From Latur to Ambajogai, he has to travel a distance of 20 kms.

9. Shri Gaikwad, therefore, submits that if the balance of convenience is to be seen, the proceedings at Latur need not be transferred since the applicant has to travel 32 kms from Sayagaon to Latur and the respondent has to travel 35 kms from Janwal to Latur. Even if the proceedings are transferred to Ambajogai, there is hardly any difference caused to the applicant since she has to travel a distance of about 20 to 22 kms from Saygaon to Ambajogai, in any case.

10. Shri Gaikwad further submits that the respondent is an agriculturist. He can hardly support his family with the agricultural activities. He will be put to further hardships if the proceedings are transferred to Ambajogai. He has denied all the allegations made by the applicant.

11. I have considered the submissions of the litigating sides and their averments set out in the application and the affidavit in reply. It is apparent that in between Saygaon to Latur and Sayagaon to Ambajogai, the difference is of about 10 kms for the applicant. She will have to travel from Saygaon to Ambajogai if the proceedings are transferred.

12. However, the salient feature of this case is that there are already two Criminal proceedings initiated by the applicant which are pending before the competent Courts at Ambajogai and the respondent/ husband attends both the matters. As such, the applicant as well as the respondent have to travel to Ambajogai since both of them are involved in the said two cases before the Court at Ambajogai. If H.M.P. No. 163 of 2014 is transferred from Latur to Ambajogai, it would make no difference for the respondent and at the same time, it would be convenient for the applicant as she visits Ambajogai in the other two matters.

13. The Hon'ble Supreme Court in the case of SumitaSingh Vs. Kumar Sanjay and another [AIR 2002 SC 396] has observed in paragraph Nos. 1 to 4 as under:-

1. This is a transfer petition by the wife. She seeks the transfer of matrimonial proceedings filed by the husband against her in Ara, Bhojpur to Delhi. It is her case that she is now living and working in Delhi and that she would be unable to travel up and down from Delhi to Ara, a distance of about 1100 Kilometers from Delhi, to defend the matrimonial proceedings. She also states that she has no one with whom she can stay in Ara because her parents are residents of Gurgaon.

2. Learned counsel for the husband states that the wife is an educated woman who is doing very well and can, therefore, travel to Ara while the husband is unemployed.

3. It is the husband's suit against the wife. It is the wife's convenience that, therefore, must be looked at. The circumstances indicated above are sufficient to make the transfer petition absolute.

4. Accordingly, Matrimonial Case No. 30 of 2000 pending before the VIth Additional District and Sessions Judge, Ara, Bhojpur, Bihar shall stand transferred to the District Judge, Delhi, who shall hear it himself or assign it for hearing to an appropriate forum.

14. The observations of this Court in the case of Sau. Kalpna w/o Pankaj Rozatkar Vs. Pankaj s/o Supadu Rozatkar, 2014 (1) Mh.L.J. 32, are set out in paragraph Nos. 2 to 6 which read as under:-

2. This application is filed for transfer of the proceedings of Hindu Marriage petition No. 161 of 2007 pending before the Court of Civil Judge, Senior Division, Kalyan to the Court of the Civil Judge, Senior Division, Jalgaon. Since the facts of the case are stated by the applicant in the application, as and when it is necessary this Court will refer the said facts, however, it is not necessary for the purpose of deciding this application to reproduce the facts.

3. The learned Counsel appearing for the applicant submits that, the distance between Jalgaon to Kalyan is more than 400 Kms. and therefore, it is inconvenient for the applicant-wife to travel from Jalgaon to Kalyan to attend the proceedings instituted by the respondent-husband. It is submitted that, Special Civil Suit No. 208 of 2011 is filed by the respondent -husband before the Civil Court at Jalgaon for compensation against the applicant, which is pending. It is submitted that, other two proceedings instituted by the application, (1) under Protection of Women from Domestic Violence Act and (2) H.M.P. No. 107 of 2011 for Restitution of Conjugal Rights, are pending before the Court at Jalgaon. In addition to this, it is submitted that, four years son is residing with the applicant. Therefore, the learned Counsel appearing for the applicant submits that, Civil Revision Application deserves to be allowed.

4. On the other hand, the learned Counsel appearing for the respondent submits that, , the respondent is working as Teacher and therefore, it is difficult for him to travel from Kalyan to Jalgaon. It is submitted that, applicant-wife has instituted criminal complaint against the respondent and his family members invoking provisions of Section 498-A of the Indian Penal Code.

5. I have heard the learned Counsel appearing for the parties. There is no dispute that, distance between Kalyan to Jalgaon is more than 400 Kms. Apart from the distance, four years child is with the applicant. The applicant has to look after that child and therefore, if the balance of convenience is weighed, certainly it lies in favour of the applicant. Apart from what is observed herein above, other three proceedings are pending at Jalgaon, out of which, one at the instance of the respondent being Special Civil Suit No. 208 of 2011 for compensation against the applicant.

6. In that view of the matter and in view of the authoritative pronouncement of the Supreme Court in the case of Sumita Singh Vs. Kumar Sanjay reported in (2001) 10 S.C.C. 41, wherein the Supreme Court held that, in a proceedings instituted by the husband, convenience of the wife should be looked at, this Misc. Civil Application deserves to be allowed. Hence, the following order;-

(1) The Misc. Civil Application is allowed to the extent of transfer of Hindu Marriage Petition No. 161 of 2007 pending in the Court of Civil Judge, Senior Division, Kalyan to the Court of Civil Judge, Senior Division, Jalgaon.

(2) The concerned Court at Kalyan to take steps to transfer the said proceedings within a one week from receipt of the copy of this order.

(3) On transfer of the said proceedings, the Civil Judge, Senior Division, Jalgaon should make attempt to dispose of the same, as expeditiously as possible, however, within one year from today.

(4) The concerned Court should not grant unnecessary adjournments to the parties unless there exist extraordinary reason for the same.

(5) It is made clear that, so far proceedings which are pending before the Judicial Magistrate, First Class, Kalyan, this Court has not passed any order and it is left open to the applicant to take appropriate proceedings before the appropriate forum if the applicant is advised.

(6) Misc. Civil Application is allowed to the above extent and same stands disposed of. Rule made absolute on above terms.

15. This Court has considered a similar situation in the case of Dr. Sau. Nilima Mahesh Muley Vs. Mahesh Madhavrao Muley [2013 (1) ALL MR 398] and the observations of this Court in paragraph Nos. 7 to 9 are as under:-

"7. I have given due consideration to the rival submissions. It is not in dispute that, the parents of the applicant are staying at Amravati. It is also not in dispute that, the complaint is filed by the applicant under the provisions of Protection of Women's from Domestic Violence Act, 2005 and also one more proceeding is

initiated at Amravati. The averments in the application that, threats are extended to the father of the applicant by unidentified person at the instance of the respondent, is not specifically denied by the respondent in specific words in his reply. The contention of the respondent that, the marriage is not solemnized at Amravati and also other events are not taken place at Amravati and therefore, there is no question of transfer of the proceedings from Ahmednagar to Amravati, is devoid of any merits.

8. The applicant has denied that, she is in service at Mumbai on regular basis, as Medical Practitioner. Even if the contention of the respondent is accepted that, the applicant has treated one patient on 14th July, 2012 at Mumbai, that is no ground to reach to the conclusion that, she is permanently residing at Mumbai. Therefore, at the cost of repetition, it has to be observed that, the parents of the applicant are staying at Amravati and as stated by the applicant, she needs moral support of her parents in the matrimonial dispute and therefore, trial should be at Amravati. It is true that, the Court has to 11 mca12.12 exercise discretion judiciously looking into the facts involved in the matter. In the facts of this case, it is not in dispute that, the distance from Amravati to Ahmednagar is around 500 Kms. It is also not in dispute that, the parents of applicant are staying at Amravati.

9. The Hon'ble Supreme Court in the case of Sumita Singh vs. Kumar Sanjay reported in (2001) 10 S.C.C. 41, has taken a view that, in a matrimonial proceedings filed by the husband, the convenience of the wife should be looked at.

"16. The applicant/wife has voiced a serious apprehension of physical harm at the hands of the respondent/ husband (ground No. V of the application). Same is denied by him.

17. In the light of the fact situation and the law as is laid down, there would be no inconvenience or hardship caused to the respondent if H.M.P.No. 163 of 2014 is transferred to the competent Court at Ambajogai. Ends of justice would be met by directing the parties to bring it to the notice of the Court conducting the two Criminal cases and H.M.P. 163 of 2014 that these three cases shall be posted on the same day so as to make it convenient for the applicant as well as the respondent to travel from Ambajogai and participate in the hearings of the said

cases.

18. For the above reasons, this application is allowed. H.M.P. No. 163 of 2014 pending before the learned Civil Judge, Senior Division, Latur shall stand transferred to the Court of learned Civil Judge, Senior Division, Ambajogai. Both the parties shall place a copy of this order before the said Court at Latur as well as before the Courts dealing with the Misc. Criminal Application No. 62 of 2014 and Regular Criminal Case No. 173 of 2014 so as to ensure that these three cases are posted on the same date before the Courts at Ambajogai.

19. In so far as H.M.P. No. 163 of 2014 is concerned, both the learned Advocates have assured the Court that they would cooperate with the concerned Court for the expeditious hearing and disposal of these proceedings. They shall not seek adjournments on frivolous and unreasonable grounds. In the event the parties are inclined to have the matter referred to a mediator at Ambajogai, they are at liberty to make an application before the competent Court for the said purposes.

20. At this juncture, the learned Advocate for the respondent seeks stay to the operation of this order for a period of four weeks. Shri Nimbalkar, learned Advocate for the applicant opposes the same on the ground that it is a matter of convenience even for the respondent to have all the proceedings at one place before the Courts and as such, no loss would be caused to him.

21. Considering the above fact that I have ensured the convenience of the respondent by directing the Courts to have the hearing of the three matters on the same day at Ambajogai, the request for stay is refused.

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