

(2012) 07 BOM CK 0051

In the Bombay High Court

Case No : Misc. Civil Application No. 12 of 2012

Dr. Sau. Nilima Mahesh Muley

APPELLANT

Vs

Mahesh Madhavrao Muley

RESPONDENT

Date of Decision : 19-07-2012

Acts Referred:

Hindu Marriage Act, 1955 — Section 12(1)(C)
Penal Code, 1860 (IPC) — Section 506

Citation : (2013) 2 ABR 767 : (2013) 1 ALLMR 398 : (2013) 2 BomCR 639

Hon'ble Judges : S.S. Shinde, J

Bench : Single Bench

Advocate : Sachin Deshmukh, for the Appellant; D.G. Nagode, for the Respondent

Judgement

S.S. Shinde, J.—Rule. Rule made returnable forthwith. With the consent of parties heard finally. This Misc. Civil Application is filed for transfer of the Hindu Marriage Petition No. 377 of 2011, initiated by the respondent-husband under the provisions of Section 12(1)(C) of the Hindu Marriage Act, 1955, from the Court of the Civil Judge, Senior Division, Ahmednagar, to the Court of the Civil Judge, Senior Division, Amravati.

2. The facts as disclosed in this application, by the applicant-wife, seeking transfer are as under:

It is the case of the applicant that, the marriage between the applicant and the respondent is performed on 27th December, 2010. The terms of the applicant and the respondent were cordial for very short span, however, thereafter, the respondent started ill treating the applicant on one or other pretext. The applicant tried to convince the respondent and other in-laws, however, there was no change in the conduct of the respondent, however, lastly, on 4th April, 2011 the applicant was driven out of the matrimonial house, in order to satisfy their demands. The applicant is a registered medical practitioner, however, she was prevented from doing the medical practice.

It is further case of the applicant that, on 28th June, 2011 the applicant has lodged the complaint against the respondent and in-laws with the police station, Frazepura, Amravati for ill treatment. The applicant has also initiated the proceedings under the provisions of the Protection of Women's from Domestic Violence Act, 2005 before the Chief Judicial Magistrate, Amravati and same is registered as Misc. Criminal Application No. 98 of 2011.

3. It is further case of the applicant, that the father of the applicant has lodged complaint with the police station Frazerpura, Amravati on 12th August, 2011 since the threats were extended to the father of the applicant from the respondent and brother of the respondent and other in-laws.

It is the case of the applicant that, the respondent has initiated the proceedings u/s 12(1)(C) of the Hindu Marriage Act, 1955 seeking decree of divorce. The said proceedings are latter in time. It is further case of the applicant that, on 20th October, 2011 the father of the applicant has lodged complaint with the police station in respect of the incident, which occurred on 19th October, 2011 on which day the summons of the Hindu Marriage Petition No. 377 of 2011 was served by the Bailiff. The Bailiff was accompanied with unidentified person, who has given threats to the father of the applicant. On inquiry, the name was disclosed as Mr. Nagre, who extended threats to the father of the applicant. It is the case of the applicant that, said Nagre was sent by the respondent. Therefore, complaint u/s 506 of the Indian Penal Code was registered by the father of the applicant. The copies of F.I.R. and complaint are placed on record by the applicant alongwith the application.

4. It is the case of the applicant that, the proceedings initiated by the respondent under the provisions of Hindu Marriage Act, 1955 are being H.M.P. No. 377 of 2011 are pending at Ahmednagar, and it would be most inconvenient for the applicant to travel and appear in the said proceedings being lady. It is further stated that, the applicant will have to travel from Amravati to Ahmednagar, distance from Amravati to Ahmednagar is more than 500 Kms, which would cause inconvenience to the applicant, being lady. There is nobody to accompany the applicant for the purpose of travelling from Amravati to Ahmednagar, except the age old father of the present applicant. Therefore, inconvenience of the applicant, being lady, to attend the proceedings initiated by the respondent, needs to be considered. It is also stated in the application that, the applicant being lady does not have any source of income to bear the expenses for attending the proceedings at Ahmednagar.

After filing affidavit in reply by the respondent, rejoinder affidavit is also filed by the applicant. More or less facts stated in the main application are re-iterated in the rejoinder affidavit. At the cost of repetition, it has been stated in the rejoinder affidavit that, the applicant is staying/residing with the parents at Amravati. It is stated in the rejoinder affidavit in paragraph-5 that, after the incident of mental blow by the respondent, the life of the applicant has become miserable and on every walk of the life, the applicant needs the support from her

parents, therefore, the applicant has decided to stay alongwith them at Amravati and the applicant is totally depending on her parents despite the fact that she is also a Doctor.

5. In pursuance of the notice issued by this Court, the respondent has filed affidavit in reply. In the affidavit in reply, it is stated that, the application is not maintainable, as neither marriage between the applicant and the respondent was solemnized at Amravati nor after marriage, they cohabited at Amravati. It is further stated that, the applicant is not approached before this Court with clean hands as she has given her address in the application as her residence is at Amravati, however, she is residing at Mumbai and this application is filed only with evil motive knowingly well that, the respondent has liability of his two minor daughters namely Ms. Niharika, age 2-1/2 years and Ms. Shreya, age 7 years from first wife. Not only this, the respondent has liability of his aged father who is suffering from bladder cancer and requires day to day nursing and care. Moreover, the respondent is M.S. (Ortho.) and have own hospital at Ahmednagar and due to the reasons stated herein above, the respondent is required to remain at Ahmednagar to take care of his children, aged father and the hospital and patients therein.

Other facts are also stated in paragraph-8 of the affidavit in reply by the respondent. It is stated that, the applicant is serving in Ashirwad Maternity and Nursing Home, E/5 Highland Park, Guru Govind Singh Marg, Mulund (West), Mumbai, as a Resident Medical Officer. It is further stated that, when the Bailiff from Small Causes Court, Mumbai went to serve the summons, as per the Bailiff report dated 1st December, 2011 it was found that the applicant is working at another branch of the said Nursing Home at Bhandup which is situated at Janta Market next to Shiv Mandir, Subhash Road, Off L.B.S. Marg, Bhandup (West), Mumbai-78. It is the contention of the respondent, as reflected in paragraph-8 of the reply that, Bailiff went to the above address to serve the summons wherein the applicant was present and refused to accept the summons. In paragraph Nos. 9 and 10 also, it is re-iterated by the respondent that, the applicant is residing at Mumbai. In paragraph-11 of the reply, the reference is made to the fact that, in Hindu Marriage Petition No. 377 of 2011 pending at Ahmednagar, the applicant-wife has caused appearance and she has attended the proceedings on 2-3 occasions and she has not filed any complaint receiving any threat from the respondent-husband. Other facts are also stated in paragraph-12 that, the respondent has to maintain his children, father and to attend the patients in his hospital.

The Counsel appearing for the respondent has tendered across the bar one affidavit of Smt. Mangala Baburao Jadhav. It is stated therein that, the applicant has treated her at Mumbai on 14th July, 2012.

6. 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.

7. 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 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.

8. The Hon'ble Supreme Court in the case of Sumita Singh Vs. Kumar Sanjay and Another, , has taken a view that, in a matrimonial proceedings filed by the husband, the convenience of the wife should be looked at.

(emphasis supplied).

In the present case, the applicant has come with the specific case that, it will be inconvenient for her to attend the proceedings at Ahmednagar, since the distance is more than 500 Kms. and she needs moral support of her parents and also she wish to take care of her parents during their old age. It is true that, if the proceedings are kept pending for years together, the respondent may have difficulties to attend the Court at Amravati. However, looking to the peculiar facts of this case, this Court is convinced that, the distance between Amravati and Ahmednagar is around 500 Kms. and it will be inconvenient and difficult for the applicant to attend the proceedings initiated by the husband in the Court at Ahmednagar. Secondly, the applicant has come with the case that, she needs moral support of her parents and nobody is there to look after her interest. Therefore, for the reasons aforesaid, this Court is inclined to transfer the proceedings initiated in the Court at Ahmednagar to the competent Court at Amravati.

9. In the result, Misc. Civil Application is allowed. Hindu Marriage Petition No. 377 of 2011 pending on the tile of the Court of the Civil Judge, Senior Division, Ahmednagar, shall stand transferred to the Court of the Civil Judge, Senior Division, Amravati. The Civil Judge, Senior Division, Ahmednagar to take

necessary steps to forward/send the entire papers in respect of the Hindu Marriage Petition No. 377 of 2011 to the Court of the Civil Judge, Senior Division, Amravati, within one week from the date of receipt of copy of this order.

Since the proceedings are matrimonial in nature, it is desirable that, the concerned Court shall hear the H.M.P. No. 377 of 2011 and decide the same, as expeditious as possible, however, within six months from the first date of hearing to be fixed by the concerned Court. It is needless to mention that, the Court should not grant any unnecessary adjournment to the parties unless there exists extraordinary circumstance for the adjournment.

With the above observations, Misc. Civil Application stands disposed of. Rule made absolute on above terms. No order as to costs.