

(2021) 04 GUJ CK 0064

In the Gujarat High Court

Case No : R/Misc. Civil Application No. 195 Of 2020

Niyatiben W/O Anandkumar Patel D/O Ketanbhai Patel

APPELLANT

Vs

Anandkumar Bharatbhai Patel

RESPONDENT

Date of Decision : 27-04-2021

Acts Referred:

Code Of Civil Procedure, 1908 — Section 24
Hindu Marriage Act, 1955 — Section 9, 13

Citation : (2021) 04 GUJ CK 0064

Hon'ble Judges : Dr. Ashokkumar C. Joshi, J

Bench : Single Bench

Advocate : Vijal P Desai, Ishita V Desai, R G Chaudhary

Final Decision : Allowed

Judgement

Dr. Ashokkumar C. Joshi, J

[1]. Heard learned Advocate Mr. Vijal P. Desai for the Applicant and learned Advocate Mr. R.G.Chaudhary for the Opponent through video conference.

Â [2]. The present application under Section-24 of the Civil Procedure Code,1908 (for short the Code) is filed by the applicant-wife to transfer Family

Suit No.2326 of 2019 pending with the Court of learned Principal Judge, Family Court, Ahmedabad to Court of learned Additional Senior Civil Judge

& A.C.J.M., Kapadwanj.

[3]. It is the case of the applicant that she has got married with the respondent on 2.2.2013 as per Hindu rights and customs, during short time of

married quarrel started with the present respondent and the Respondent has filed Family Suit No.2326 of 2019 under Section 9 of the Hindu Marriage

Act before the learned Judge, Family Court, Ahmedabad. It is the case of the Applicant that she has filed Cr.Misc. Application No. 218 of 2019 under the Domestic Violence Act and has also filed Criminal Misc. Application No. 219 of 2019 under Sec. 125 of the Code of Criminal Procedure along with interim maintenance before the learned Additional Civil Judge at Kapadwang. The Applicant has also filed H.M.P. No. 37 of 2019 under Section 13 of the Hindu Marriage Act for Divorce before the learned Additional Senior Civil Judge & A.C.J.M. Kapadwanj. All the aforesaid proceedings are pending.

[4]. Learned Advocate for the Applicant has submitted that renewal of registration for dental practice is old and now the Applicant is not practicing.

Further, if the two courts have concurrent decisions, there were chances of difference in opinion. Further, it is difficult to travel from Kapadwanj to

Ahmedabad for the Applicant and the hardship may cause to the Applicant wife. Learned advocate for the applicant submitted that the applicant is a

poor lady staying separately at Kapadwanj, District Kheda, which is approximately 65 kms. away from Ahmedabad. He has further submitted that the

proceedings which are pending before the Court of the learned Family Court, Ahmedabad, being Family Suit No.2326 of 2019, be transferred to the

Court of learned Additional Senior Civil Judge & A.C.J.M., Kapadwang. He has further submitted that the husband is doing business and also earning

in lakhs per month. The Respondent is having sufficient source of income and is not having any other liability and therefore considering the

comparative hardship faced by the Applicant, discretion may kindly be exercised.

[5]. Per contra, learned Advocate for the Opponent has heavily opposed the Application and submitted that in the present case, certificate of dental

practice is renewed and the distance between Ahmedabad and Kapadwanj is hardly 65 kms. and both the competent courts can pass independent

orders and therefore there is no requirement to transfer the matter and the Application may be dismissed.

[6]. Considering submissions made by the learned advocates for the respective parties, it appears that it would be difficult for the applicant to travel

about 65 kms from Kapadwang to Ahmedabad. Further as such there is no latest certificate which indicates that the Applicant is earning from her

dental practice. Further, since the applicant is a housewife and to travel 65 kms,

causing comparative hardships. This Court has also relied upon the decisions rendered in the case of Minesh Rajnikant Dalal v/s. Avani Minesh Dalal, reported in 2002 (2) GLR 1685 and also referred to the decision in the case of Jayshreeba Jayendrasinh Raulji Vs. Jayendrasinh ganpatsinh Raulji in MCA no. 431 of 2019. Therefore, this is a fit case to exercise discretion under section 24 of CPC for transferring the matter from Ahmedabad to Kapadwang. The application is allowed. The Family Suit No.2326/2019, pending before the Learned Judge, Family Court, Ahmedabad is ordered to be transferred to the Court of learned Additional Senior Civil Judge & C/MCA/195/2020. JUDGMENT A.C.J.M., Kapadwanj. Rule is made absolute. No orders as to cost. Direct service is permitted through fax/e-mail/ any other electronic mode.