
(2013) 09 BOM CK 0143
In the Bombay High Court
Case No : Misc. Civil Appln. No. 341 of 2013

Sayali	Vs	APPELLANT
Swapnil		RESPONDENT

Date of Decision : 19-09-2013

Acts Referred:

Citation : (2014) 5 ALLMR 97 : (2014) 1 MhLj 584

Hon'ble Judges : A.B. Chaudhari, J

Bench : Single Bench

Judgement

A.B. Chaudhari, J.—Heard. RULE.

2. Taken up for final disposal by consent of the rival parties looking to the nature of the matter at hand.

3. The undisputed facts are that the applicant-wife is residing with her parents at Nagpur, after having returned from matrimonial house of the husband. It is also not in dispute that she has filed proceedings for maintenance and the proceedings under the provisions of the Domestic Violence Act, in the Courts at Nagpur against the respondent-husband. The respondent-husband has filed matrimonial proceedings seeking a decree of nullity of marriage in the Court at Thane.

4. The present transfer application has been filed by the applicant-wife with a prayer to transfer Hindu Marriage Petition No. 109 of 2013 from the Court of 3rd Civil Judge Senior Division, Thane to the Family Court at Nagpur before which Petition No. C-22 of 2013 is pending.

5. Mr. B.N. Mohta, learned counsel for the respondent-husband has raised a preliminary objection to the territorial jurisdiction of this bench of the Bombay High Court to entertain the present application for transfer on the following grounds:

i) The cause of action for filing Hindu Marriage Petition No. 109 of 2013 in the

Court at Thane arose at Thane, which petition is sought to be transferred by the present application. That being so, the transfer application ought to be filed and tried by the Principal Seat of the Bombay High Court and not at Nagpur Bench.

ii) Sections 22 and 24 of the CPC read with Chapter XXXI Rule 1 of the Bombay High Court Appellate Side Rules, 1960 and further read with definition of the "High Court" in Clause 3(25) of the General Clauses Act and the definition of "Subordinate Courts" in section 3 of the CPC shows that the subordination of the Courts to the High Court will have to be held on judicial side. If subordination of the Court is held to be on the judicial side then in that case the Court at Thane is not subordinate looking to the territorial jurisdiction of Nagpur Bench of the Bombay High Court. He relied on a decision of single Judge of the Madras High Court in the case of K. Kavitha vs. Subramanian, reported in AIR 2007(NOC) 1841 (MAD.)

iii) The witnesses to be examined by the husband are the Doctors residing at Thane and Mumbai and it will be very difficult for the respondent-husband to produce witnesses in the event of the case being transferred to Nagpur Court.

iv) Respondent-husband is ready to pay the required charges to the applicant-wife and her escort, if any, to undertake to and fro journey between Nagpur and Thane.

6. Per contra, Mr. Thakur, learned counsel for the applicant-wife, in response to the preliminary objection relief on the following decisions of the Supreme Court and Single Judges of this Court:

i) M.C.A. No. 82/2007, Mrs. Sandhya Rajesh Chaturvedi vs. Rajesh Ramkrishna Chaturvedi, ii) Anita Balkrishna Barge Vs. Balkrishna Sopan Barge, , iii) MCA No. 320/2011, Mrs. Priti Chauhan/Madansingh Chouhan, iv) Sangamitra Royalwar Vs. Ramakant Royalwar, , v) MCA No. 33/2013 Sau. Snehal Omprakash Kothekar Vs. Shri. Omprakash Domaji Kothekar, .

The learned counsel also relied on the decisions of the Supreme Court for transfer of the case on merits thereof in the cases of (i) Soma Choudhury vs. Gourab Choudhury, reported in (2004) 13 SCC 462 and (ii) Sumita Singh Vs. Kumar Sanjay and Another, .

7. Mr. Thakur argued that there is no other go for the applicant-wife but to reside with her parents at Nagpur since she was driven out of the matrimonial house after two months of her marriage. The proceedings for domestic violence and for maintenance have already been instituted in the Courts at Nagpur and the respondent-husband has been making appearance either personally or through his Advocate in those proceedings. According to him, the respondent-husband is a Software Engineer earning handsome remuneration but keeping an eye on the proceedings filed by the wife for maintenance etc. a defence is being raised that the respondent-husband is not in any employment now. He submitted that the defence is not plausible. He argued that the convenience of the wife has to be

seen particularly because she does not have independent source of income and she would be put to hardship if the proceedings are not transferred from Thane to Nagpur. On the contrary, according to him, no such inconvenience will be caused to the husband since he has already been attending the Courts at Nagpur.

8. I have heard the learned counsel for rival parties for quite sometime. I have gone through the provisions of law cited by Mr. Mohta and also various judgments cited by the parties. As to the question about territorial jurisdiction between the Principal Seat of the benches the question has been often raised before the Courts.

9. In the case of State of Maharashtra Vs. Narayan Shamrao Puranik and Others, three Judges of the Apex Court in paragraph 26 relied on the ratio of the decision rendered by Chagla, C.J. at the Bombay High Court. It would be appropriate to quote paragraph 26 in its entirety, which reads thus:

26. As to the scope and effect of subsection (3) of section 51 of the Act, the question came up for consideration before Chagla, C.J. and Badkas, J. in Seth Manji Dana vs. Commissioner of income tax, Bombay, Civil Appeal No. 995 of 1957 (Bom), decided on July 22, 1958. This was an application by which the validity of Rule 254 of the Appellate Side Rules was challenged insofar as it provided that all income tax references presented at Nagpur should be heard at the principal seat of the High Court at Bombay, and the contention was that the result of this rule was that it excluded income tax references from the jurisdiction of the High Court functioning at Nagpur. In repelling the contention, Chagla, C.J. observed:

Legally, the position is quite clear. u/s 51(3) of the States Reorganization Act, the Judges sitting at Nagpur constitute a part of the High Court of Bombay. They are as much a part of the High Court of Bombay, and if we might say so distinguished part of the High Court of Bombay, as if they were sitting under the same roof under which Judges function in Bombay. All that happens is that the Chief Justice, under the powers given to him under the Letters Patent distributes the work to various Judges and various Divisional Benches, and acting under that power he distributes certain work to the Judges sitting at Nagpur.

He then continued:

All that rule 254 does is to permit as a matter of convenience certain matters to be presented at Nagpur to the Deputy Registrar. If rule 254 had not been enacted, all matters would have to be presented at Bombay and then the Chief Justice would have distributed those matters to different Judges, whether sitting in Bombay or at Nagpur. It is out of regard and consideration for the people of Vidarbha and for their convenience that this rule is enacted, so that litigants should not be put to the inconvenience of going to Bombay to present certain matters. Therefore, this particular rule has nothing whatever to do either with section 51(3) of the States Reorganisation Act or with the Constitution." With regard to Rule 254, he went on to say:

Now, having disposed of the legal aspect of the matter, we turn to the practical aspect, and let us consider whether this rule inconveniences the people at Nagpur. If it does, it would certainly call for an amendment of that rule. Now, there is particular reason why all Income Tax References should be heard in Bombay and that reason is this. The High Court of Bombay for many years, rightly or wrongly, has followed a particular policy with regard to Income Tax References and that policy is that the same Bench should hear Income Tax References, so that there should be a continuity with regard to the decisions given on these References. I know that other High Courts have referred to this policy with praise because they have realised that the result of this policy has been that Income Tax Law has been laid down in a manner which has received commendation from various sources. The other reason is and we hope we are not mistaken in saying so that the number of Income Tax References from Nagpur are very few. If the number was large, undoubtedly a very strong case would be made out for these cases to be heard at Nagpur.

He then concluded:

After all, Courts exist for the convenience of the litigants and not in order to maintain any particular system of law or any particular system of administration. Whenever a Court finds that a particular rule does not serve the convenience of litigants, the Court should be always prepared to change the rule.

The ratio to be deduced from the decision of Chagla, C.J. is that the Judges and Division Courts sitting at Nagpur were functioning as if they were the Judges and Division Courts of the High Court at Bombay.

10. The decision in the case of K. Kavitha vs. Subramanian, cited by Mr. Mohta, is clearly in contrast to the decision of another single Judge of the Madras High Court in the case of T. Kamatchi Vs. S. Murali @ Kanagasabapathy Village Administrative Officer, in which the single Judge of the same Court in paragraphs 17 and 18 held as under:

17. True it is, that the word High Court u/s 3(25) of the General Clauses Act is defined as, "High Court", used with reference to Civil proceedings shall mean the highest Civil Court of appeal in the part of India in which the Act or regulation containing the expression operates. Although, it may appear that the Court of appeal for cases in the Districts lying within the Territorial jurisdiction of Permanent Bench at Madurai would only be the latter, when once the proviso to Presidential Order above mentioned empowers the Chief Justice in the Principal Seat at Madras High Court to order for hearing of any case pending in the Madurai Bench at Madras, it would only indicate that such power of appellate authority of the Madurai Bench is likely to be delegated to the Principal Bench at Madras. This delegation as connoted to the proviso to the Presidential Order cannot have any meaningful effect unless and until the Principal Seat is clothed with such power of appellate authority over the Territorial jurisdiction of Permanent Bench at Madurai.

To put it in other words if only the Principal Bench at Madras can hear and decide the matter arising out of Districts lying in the Territorial jurisdiction of Permanent Bench at Madurai, the proviso to the Presidential Order can meaningfully empower the Chief Justice to make order that any case or class of cases arising in any such Districts shall be heard at Madras. It is thus the Principal Seat at Madras is delegated with the power of appellate authority over cases arising from the Districts allotted to Permanent Bench at Madurai. When once this element is proved, then both the Presiding Officers and the Courts of the Districts falling within the Territorial jurisdiction of the Permanent Bench at Madurai will be considered as subordinate also to the Principal Seat at Madras.

18. Moreover, it cannot be said that simply because the jurisdiction was bifurcated between the Permanent and Principal Bench, the Courts and the offices in the former's jurisdiction may not be subordinate to the Chief Justice, who wields power of administration for both Permanent Bench at Madurai and Principal Seat at Madras. Thus, the Courts lying within the jurisdiction of Permanent Bench at Madurai can be termed as subordinate to the Principal Seat at Madras and in that sense, the powers vested u/s 24(1)(b) of CPC can be exercised by this Court and valid transfer can be made upon withdrawing the case from the Court at Pattukottai and transferring the same to that of the Court at Salem.

In the case of Kamatchi vs. G P. Jaiprakash, 1997 AIHC 364 another single Judge of Kerala High Court with reference to section 23 of the CPC held in paragraph 9, relying on the decision of the Rajasthan High Court, as under:

9. With regard to third objection regarding section 21A of the Hindu Marriage Act and earlier suit was filed in Palghat. I refer to the decision of the Rajasthan High Court in Smt. Sunita Bali Vs. Ashok Bali, where it was held that such technical objections cannot restrict the power of the High Court in transferring the case. u/s 23(3) of the Code of Civil Procedure, it is very clear. It provides that in case two petitions are pending before different Courts which are subordinate to different High Courts application shall be made to the High Court within the local limits of whose jurisdiction the Court in which the suit is brought is situate. The application for transfer will come u/s 23(3) of the Code of Civil Procedure. High Court has got power to transfer the suit pending in a Court subordinate to it to any other Court. Powers of High Court u/s 23(3) are not restricted by any of the technicalities. Objections with regard to the provisions in the Hindu Marriage Act were also considered by the Rajasthan High Court and it was held that such powers were not subject to the procedure adopted by different matrimonial Courts and the power to transfer petition, in such circumstances, enumerated in section 21A cannot be whittled down, in view of the powers u/s 23(3). As held by the Bombay High Court in Shri Seetha Mahalakshmi Rice and Groundnut Oil Mills. Vs. Rajesh Trading Code and Another, an order of transfer u/s 22 is based on balance of convenience. The fact that one suit was filed earlier is immaterial.

With reference to the writ jurisdiction of the Bench at Nagpur similar question

arose in the case of Nitin Industrial Associates, Khamgaon Vs. State of Maharashtra and others, Division Bench of this Court held thus in paragraph 6 of the said judgment.

6. Turning to the next limb of the argument namely that since the cause of action had arisen in Bombay the writ jurisdiction of the High Court Bench at Nagpur stands abridged by reason of the provisions of section 41 of the Bombay Reorganisation Act, 1960 (Act. No. 11 of 1960) read with the provisions of Chapter XXXI of the Bombay High Court Appellate Side Rules, 1960, we do not see how any enactment passed by the Parliament and/or by the State Legislature can possibly trench upon the jurisdiction conferred on the High Court by Article 226. In re Kerala Education Bill, 1957, AIR 1958 SC 956, it has been observed as follows:

No enactment of a State Legislature can, as long as that Article (i.e. 226) stands, take away or abridge the jurisdiction and power conferred on the High Court by that Article.

In view of this, the contention must be negated. But be that as it may, although the said two provisions cannot abridge the jurisdiction, the said two provisions need to be looked at in their proper perspective. The said two provisions namely, section 41 of the Bombay Reorganisation Act, 1960 (Act No. 11 of 1960) and the provisions of Chapter XXXI of the Bombay High Court Appellate Side Rules, 1960 are designed to meet administrative requirements, and administrative convenience. Hence it is not that every petition under Article 226 which is presented to this Bench at Nagpur that needs to be entertained and regard must be had to these two provisions in the filing of writ petitions so that the petitions can be dealt with by an appropriate Bench. However, insofar as this matter is concerned, in view of the above discussion, it cannot be said that the Bench at Nagpur has no jurisdiction to try and hear the petition...

11. The conspectus of the above decisions to my mind does not permit making of any definition about the jurisdiction in the manner sought to be done between the Principal Seat at Bombay and the Benches in the State of Maharashtra. The objection on that count raised by Mr. Mohta, therefore, must be overruled.

12. Second issue is about the cause of action. In the case of Rajasthan High Court Advocates Association Vs. Union of India and Others, the Apex Court, as to the cause of action, held thus in paragraph 17:

17. The expression cause of action has acquired a judicially settled meaning-In the restricted sense cause of action means the circumstances forming the infraction of the right or the immediate occasion for the action. In the wider sense it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but the infraction coupled with the right itself. Compendiously the expression means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Every fact which is necessary to be proved, as

distinguished from every piece of evidence which is necessary to prove each fact, comprises in cause of action. It has to be left to be determined in each individual case as to where the cause of action arises. The Chief Justice of the High Court has not been conferred with the legislative competence to define cause of action or to declare where it would be deemed to have arisen so as to lay down artificial or deeming test for determining territorial jurisdiction over an individual case or class of cases. The permanent bench at Jaipur has been established by the Presidential Order issued under sub-section (2) of section 51 of the Act. The territorial jurisdiction of the permanent bench at Jaipur is to be exercised in respect of the cases arising in the specified districts. Whether the case arises from one of the specified districts or not so as to determine the jurisdictional competence to hear by reference to territory bifurcated between the principal seat and the bench seat, shall be an issue to be decided in an individual case by the Judge or Judges hearing the matter if a question may arise in that regard. The impugned explanation appended to the Order of the Chief Justice dated 23rd December, 1976 runs counter to the Presidential Order and in a sense it is an inroad into the jurisdiction of the Judges hearing a particular case or cases, pre-empting a decision to be given in the facts of individual case whether it can be said to have arisen in the territory of a particular district. The High Court is right in taking the view which it has done.

13. The submission made by the learned counsel for the respondent-husband that the cause of action for filing matrimonial proceedings in the Court at Thane arose at Thane and that the same should be treated as cause of action for the purposes of deciding the present transfer application u/s 24 of the Code of Civil Procedure, does not appeal to me. The proceedings of transfer u/s 24 of the CPC are based on an independent cause of action namely that the applicant-wife in the instant case is praying for transfer of the case from Thane to Nagpur on various grounds. The bundle of facts disclosed by her in her application requesting for such transfer u/s 24 of the CPC themselves constitute a cause of action and therefore, it is that cause of action which is relevant for exercise of powers u/s 24 of the Code. In the light of cause of action accrued to the applicant-wife for transfer of the Hindu Marriage Petition from Thane, I find that even on the issue of cause of action the present application for transfer is well maintainable.

14. The submission made by Mr. Mohta about examination of witnesses, which the respondent-husband wants to produce before the Court, is equally unsustainable. In the first place, the witnesses who are said to be the Doctors can be produced before the Court by prior appointment of the Presiding Officer of the Court, so that the witnesses are not required to go back without recording effective evidence. Even otherwise, in the wake of availability of the facility of video conferencing for recording the evidence the submission made by Mr. Mohta cannot be accepted. Next submission about the convenience of the wife and inconvenience for the husband has been well taken care of by the various judgments to say and to quote the decisions in the case of Soma Choudhury and

Sandhya Chaturvedi (supra) would be adequate. In addition to the fact that the respondent-husband is already appearing in the proceedings filed at Nagpur in some other cases would certainly answer the aspect of convenience or inconvenience projected before me by the learned counsel for the respondent - husband. The upshot of the above discussion is that the present application must be allowed. In the result I pass the following order.

ORDER

The Miscellaneous Civil Application No. 341 of 2013 is allowed. Hindu Marriage Petition No. 109 of 2013 pending on the file of 3rd Joint Civil Judge Senior Division, Thane is transferred to the Family Court at Nagpur for hearing along with matrimonial Petition No. C22 of 2013 filed by the present applicant in the Family Court at Nagpur.

Rule is made absolute accordingly with no order as to costs.