

(2010) 09 GUJ CK 0097
In the Gujarat High Court

Case No : Misc. Civil Application for Transfer No. 1726 of 2009

Shilpa

APPELLANT

Vs

Sunil Kishan Maheshwari

RESPONDENT

Date of Decision : 14-09-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 125, 24
Hindu Marriage Act, 1955 — Section 19

Citation : (2010) 09 GUJ CK 0097

Hon'ble Judges : S.R. Brahmbhatt, J

Bench : Single Bench

Advocate : Mehul S. Shah, for the Appellant; Chirag B. Patel, for the Respondent

Final Decision : Allowed

Judgement

S.R. Brahmbhatt, J.—Rule. Mr. Chirag Patel, learned Counsel waives service of Rule on behalf of respondent. By consent, rule is fixed forthwith.

2. The petitioner-respondent in H.M.P. No. 39 of 2008 pending before the court of Principal Senior Civil Judge, Gandhidham has approached this Court u/s 24 of the CPC for seeking transfer of those proceedings from the Court of Principal Senior Civil Judge, Gandhidham to that of Court of Senior Civil Judge, Jamnagar for the reasons stated in the memo of petition.

3. This Court on 28.7.2009 issued notice to the respondent and in response thereto, respondent has appeared through their advocate and placed the affidavit-in-reply controverting the averments made in the petition.

4. Facts in brief leading to filing this petition deserve to be set out as under.

5. The petitioner and respondent happened to be husband and wife. Their marriage solemnized on 17.11.2005 and out of their wedlock, they have a daughter aged about 3 years. After the marriage, the couple resided together at the house of husband at Adipur-Kutch and left for Dubai (UAE), where the

husband was pursuing his vocation. After developing difference, the wife returned back to India and started residing with her parents at Jamnagar. The petitioner was constrained to file maintenance petition on 10.6.2008 u/s 125 of the CPC in the court of Chief Judicial Magistrate, Jamnagar, which came to be registered as Criminal Misc. Application No. 591 of 2008. The petitioner has alleged that thereafter, the respondent filed petition for divorce under the provisions of Hindu Marriage Act on 17.7.2008 before the Court of Principal Senior Civil Judge at Gandhidham, which came to be registered as H.M.P. No. 39 of 2008. It has been averred in the petition that the petitioner wife preferred application on 14.8.2008 at Ex. 9 for rejection of petition, as the Court did not have jurisdiction to try H.M.P. as per the provisions of Hindu Marriage Act, especially u/s 19 of the Hindu Marriage Act. The same was rejected by the concerned court on the ground that before proceeding to Dubai, the couple had stayed for a while at Adipur together. The wife, however, did not choose to challenge the said order, but as she was facing tremendous hardship in attending the Court proceedings at Gandhidham, she is constrained to file present petition u/s 24 of the Code of Civil Procedure.

6. Learned Counsel appearing for the petitioner submitted that wife is in a very precarious condition, even at Jamnagar, as she has to look after her aged parents, who were eking their life by doing some small work at Gnativadi, which is a social organization for the community. The husband is said to have sufficient wherewithal on account his vocation in Dubai, which was facilitate his attending the court at Jamnagar and looking to the balance of convenience as well as untold hardships being faced by the wife, counsel submitted that transfer of the proceedings be ordered in the larger interest of justice.

7. Learned Counsel appearing for the respondent husband drew attention of this Court to the affidavit-in-reply filed by the husband resisting this petition for transfer on the ground that husband is wrongly said to have been doing business at Dubai, in fact, the husband is merely working in a watch repairing shop at Dubai and he is wrongly said to have been earning the amount, which has been shown in the memo of petition. The husband's brother had faced harassment and therefore, he was constrained to address letters to DSP, Kutch and PSI, Gandhidham on 14.12.2009 with regard to threats from wife, his relations and friends. He submitted that in view of this, the court may not order transfer of the proceedings. He further submitted that wife in fact put up an application Exh. 9 in the H.M.P. proceedings pending before the Gandhidham Court and after having failed therein, she has taken up this plea for transfer under separate provisions without challenging the order whereunder, the application Ex.9 was rejected. He submitted that on this count also the petition deserves to be rejected. Learned Counsel appearing for the respondent has also invited this Court's attention to page-16 of the compilation to indicate that husband had paid Rs. 25,000/- to indicate his bonafide, to which, learned Counsel for the petitioner submitted that the amount of Rs. 25,000/- is a part of the arrears of maintenance amount and therefore, this may not further the case of respondent in any manner for

resisting the petition.

8. This Court has heard learned Counsel for the parties at length and perused the papers. Learned Counsel for the petitioner has relied upon the decision in case of Sumita Singh Vs. Kumar Sanjay and Another, as well as in case of Amita Shah v. Virendra Lal Shah reported in 2001 (4) Scale 440 and contended that in such a situation the transfer of the proceedings is ordinarily effected in the interest of justice. This Court is of the view that hardships enlisted in the memo of petition from paragraph Nos. 5 to 9, it can well be said that the petitioner is not justified in seeking transfer of the proceedings. The economic condition of the parents, age of her parents and absence of any other male member to support the petitioner, would go to show that hardship pleaded by petitioner wife for seeking transfer deserves due consideration in the larger interest of justice. As against the hardship of the wife, the comparative hardship or apprehension of the husband needs to be viewed in its proper prospective. The learned Counsel for the petitioner could not dispute the fact that after writing those letters to the concerned Police Officers with regard to threats, no further concrete actions have been initiated. The Court is not impressed by the placing on record those letters to indicate that there is some kind of threats to life and liberty of the respondent if the proceedings are transferred to Jamnagar. In fact, the threats, even as per the say of respondent to respondent's brother, even from the documents produced on record, do not inspire any confidence about the genuineness of the threats. It is needless to say that the citizen have a right to approach the authorities for seeking redressal of grievances if any, and as argued by learned Counsel for the petitioner that no such threats had ever been administered and would administered in future as there is no further development in this direction from even the brother of respondent. The non-challenging of the order at Exh.9 also cannot work as impediment in transfer request made in this petition u/s 24 of Code of civil Procedure. Apart therefrom, it is not out of place to mention here that the wife and husband were lastly staying together only at Dubai and fromwhere, wife returned to India and resided with her parents at Jamnagar, which has remained uncontroverted.

9. This Court is of the view that in view of over all facts and circumstances of the case and in view of larger interest of justice, the proceedings of H.M.P. No. 39 of 2008 pending before the Court of the Principal Senior Civil Judge, Gandhidham are ordered to be transferred from the Court of the Principal Senior Civil Judge, Gandhidham to Senior Civil Judge at Jamnagar. The registry of Senior Civil Judge at Jamnagar is directed to register the case and proceeded with the matter and intimate about the date of hearing to respondent husband in accordance with law.

10. In view of the aforesaid, the petition is allowed. Rule is made absolute to that extent. There shall be no order as to costs.