

(2010) 10 GUJ CK 0047
In the Gujarat High Court

Case No : Misc. Civil Application - for Transfer No. 2014 of 2010

Varshaben Ashishbhai Jani

APPELLANT

Vs

Ashishbhai Arunbhai Jani

RESPONDENT

Date of Decision : 18-10-2010

Acts Referred:

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

Citation : (2010) 10 GUJ CK 0047

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

Bench : Single Bench

Advocate : Pratik Y. Jasani, for the Appellant; S.P. Majmudar, for the Respondent

Final Decision : Allowed

Judgement

S.R. Brahmbhatt, J.—Heard learned advocates for the parties.

2. The Petitioner Respondent in Hindu Marriage Petition No. 16 of 2010 pending before the learned Principal Civil Judge, Morbi, has moved this Misc. Civil Application u/s 24 of the CPC for seeking transfer of the said proceedings to that of Family Court, Rajkot, where, she resides after separating from the Respondent husband on account of serious dispute.

3. This Court (Coram: Ravi R. Tripathi, J.) vide order dated 05.08.2010 issued Rule, which was made returnable on 14.09.2010. The husband Respondent hereinabove has been represented by an advocate and an affidavit-in-reply has come on record.

4. Shri Jasani, learned advocate appearing for the applicant wife placed reliance upon the decision of the Supreme Court in case of Sumita Singh Vs. Kumar Sanjay and Another, and Section 19 of the Hindu Marriage Act, 1955, submitted that in No. case the maintenance petition should have been maintained at Morbi.

5. Learned advocate Shri Majmudar appearing for the Respondent husband has

contended that applicant is not justified in seeking transfer as even as per the averments made in the Hindu Marriage Petition, more particularly in para-6, it indicates that the couple lastly resided together at Morbi only. This fact couple with the fact that wife has not preferred any application on this Court for ousting the jurisdiction of Morbi, would go to show that the applicant has No. right to plead Section 19 of the Hindu Marriage Act into service. So far as inconvenience on the part of applicant, Shri Majmudar has submitted that the Respondent husband is ready and willing to bare the cost of traveling so as to help the wife in traveling from Rajkot to Morbi for attending the proceedings. Beside this, Shri Majmudar has submitted that as stated in the affidavit-in reply, the husband has also expressed that the wife has strong influence at Rajkot, which also held militating against maintaining the transfer petition.

6. This Court has heard learned advocates for the parties at length and perused the rival contention as emerged from the record and affidavit-in-reply. The husband has filed an application seeking divorce from the wife and in view of the decision of the Apex Court in case of Sumita Singh v. Kumar Sanjay, reported in 2001 (10) SCC 41, the wife's inconvenience is to be looked into and not the husband. Beside Section 19 also, enjoin the parties to file petition either at the place where parties to the marriage last resided together or where the wife is the Petitioner, where she is residing on the date of presentation of the petition. In the instant case, admittedly, the wife is lastly resided at Rajkot only. The preparedness of the Respondent husband to meet with the traveling expenses are not to be a ground for rejecting the transfer petition. The applicant wife has shown her inconvenience as stated in the memo of application and I do not intend to dwell elaborately upon the rival contentions as it may affect the parties inter-se dispute and rival contentions before the concerned Court. The Misc. Civil Application is required to be allowed and is allowed. The Hind Marriage Petition No. 16 of 2010 pending before the Court of learned Principal Civil Judge, Morbi is ordered to be transferred to the Family Court, Rajkot and registry of Family Court, Rajkot is directed to give fresh number and parties be informed accordingly about the date. Rule is made absolute to the aforesaid extent. There shall be No. order as to costs.