

DELMA LUBNA COELHO

A

v.

EDMOND CLINT FERNANDES

(Transfer Petition (C) No. 1475 of 2021)

APRIL 18, 2023

B

[RAJESH BINDAL AND ARAVIND KUMAR, JJ.]

Transfer Petition – Divorce petition was filed by husband before Family Judge, Mangaluru, Karnataka – Present petition filed by wife, a permanent resident of Canada, presently based at Mumbai, Maharashtra seeking transfer of divorce petition from Mangaluru, Karnataka to Family Court at Bandra, Mumbai, Maharashtra – Held: Petitioner is a permanent resident of Canada – She had shifted there in the year 2014 and was working there on a well-paid job, however, came to India for the matrimonial alliance – As the petitioner is a permanent resident of Canada, she must be travelling abroad regularly – She was in Canada throughout the mediation process and attended the proceedings online – Both the parties are well educated and engaged in their own jobs and professions – Petitioner can travel to Mangaluru to attend the hearing of the case and can also seek exemption from appearance whenever required – No case made out for transfer of the petition from Karnataka to Maharashtra – Constitution of India – Article 142.

C

D

E

Matrimonial Cases – Transfer Petitions – Held: Number of transfer petitions are filed in matrimonial cases, primarily by the wives seeking transfer of the matrimonial proceedings initiated by the husband – Normally, Supreme Court has been accepting the prayer made while showing leniency towards ladies – However, this leniency was being misused by women – Hence, each and every case has to be considered on its own merits.

F

R. Srinivas Kumar v. R. Shametha (2019) 9 SCC 409 : [2019] 12 SCR 873; Munish Kakkar v. Nidhi Kakkar (2020) 14 SCC 657 : [2019] 15 SCR 169 – distinguished.

G

Anindita Das v. Srijit Das (2006) 9 SCC 197 – relied on.

H

- A *Santhini v. Vijaya Venketesh* (2018) 1 SCC 1 : [2017]
12 SCR 557 – referred to.

Case Law Reference

- | | | | |
|---|-------------------|---------------|---------|
| | [2019] 12 SCR 873 | distinguished | Para 9 |
| B | [2019] 15 SCR 169 | distinguished | Para 9 |
| | [2017] 12 SCR 557 | referred to | Para 22 |

CIVIL ORIGINAL JURISDICTION: Transfer Petition (C) No. 1475 of 2021.

- C Petition under Section 25 and 151 of Code of Civil Procedure read with Order XXXVI B of the Supreme Court Rules for transfer of the M.C. No.331 of 2021 of the Hon'ble Family Judge at Mangaluru, Karnataka to the Family Court at Bandra, Mumbai, Maharashtra.

Shankar Divate, Adv. for the Petitioner.

- D Pai Amit, Ms. Pankhuri Bhardwaj, Abhiyudaya Vats, Advs. for the Respondent.

The Judgment of the Court was delivered by

RAJESH BINDAL, J.

- E 1. The present petition has been filed by the petitioner-wife seeking transfer of M.C. No. 331 of 2021 titled as “Dr. Edmond Clint Fernandes vs. Mrs. Delma Lubna Coelho” pending before the Family Judge at Mangaluru, Karnataka to the Family Court at Bandra, Mumbai, Maharashtra.

- F 2. Learned counsel for the petitioner submitted that the parties met on Facebook in the month of December, 2019 and they got married on 05.12.2020 as per Christian rites and customs at Our Lady of Miracles Church, Mangaluru.

- G 3. It is pleaded that after the marriage, the petitioner was living with the respondent at her matrimonial home at Mangaluru where she was ill-treated, insulted and humiliated by the respondent and his family members. She was accused for each and everything and offensive language was used against her. The respondent, in the pretext of giving her a break for 10-15 days, booked a one-way ticket for the petitioner and sent her to Mumbai on 15.01.2021. Thereafter, he disconnected all

H

relations with her. On 05.07.2021, after COVID-19 Pandemic restrictions were eased, the petitioner came back to Mangaluru. However, she was denied entry in her matrimonial home by the respondent and his family members. She was completely broken down. She approached the Police Station at Pandeshwar, Mangaluru and lodged a complaint. A

4. The Superintendent of Police intervened and called respondent to the Police Station. The respondent stated that he has already issued a divorce notice and his petition seeking divorce is in the process of filing. Despite repeated requests made by the petitioner, the respondent did not mend his ways. B

5. On 06.08.2021, she replied to the legal notice stating that she is ready and willing to come to her matrimonial house and wanted to live a happy married life. On 10.08.2021, she received summons of the Court along with copy of the divorce petition filed in the Family Court at Mangaluru. C

6. Learned counsel for the petitioner submitted that she is living with her old aged parents at Mumbai. There is no one at her home to accompany her from Mumbai to Mangaluru to contest the petition, which is more than 1,000 km from Mumbai. She does not even know Kannada language. Whereas the respondent will not face any problem in case the petition is transferred to Mumbai (Maharashtra). The parties lived together only for a period of about 40 days. It is stated by the petitioner that if given an opportunity, she would try to re-workout the marriage. The petitioner was forced to take up job with a bank as the respondent refused to support her financially. In case, she frequently travels to Mangaluru to attend the hearings, she is at the risk of losing her job being fresher. It will not be possible for her to bear the cost as well. D
E
F

7. On the other hand, learned counsel for the respondent submitted that though the parties had met on social media, one year prior to their marriage, she had even visited to Mangaluru after COVID-19 Pandemic/restrictions were eased and they met frequently. She was well aware of the family background of the respondent and also the status of his family. In fact, immediately after the marriage, the behaviour of the petitioner was not the same as was prior to the marriage. The respondent resides with his aged parents. He is a doctor by profession. The respondent is also the founder and CEO of a global health organization involved in philanthropic activities. Initially petitioner was proud of this but later on G
H

A the attitude changed. The respondent also paid professional fees for engineering grade to ensure petitioner's financial independence as desired by her even prior to their marriage. She now misbehaved with the respondent's parents as she wanted to live a luxurious life. All positive points prior to the marriage were now negative.

B 8. In fact, the petitioner being a permanent resident of Canada, was habitual of that lifestyle. The marriage was just to spoil the life of the respondent though initially, it was claimed that she loves Indian culture and traditions. Though it is alleged that the respondent had shunted out the petitioner from matrimonial home, however, it was her own decision to move out. Immediately, after reaching Mumbai, she applied for a job
C in ICICI Bank and sent her resignation from the Organization on 19.02.2021, where she was working with the respondent. She had joined the job in the Bank in 05.04.2021. Number of efforts were made by the respondent to re-concile the marriage but with no result and the efforts in the mediation also failed.

D 9. The respondent was also kept in dark about location of new flat worth ₹ 2,00,00,000/- (Rupees two crores only) purchased by her and her family. The respondent came to know about the address when she filed a complaint at the Women's Police Station, on 06.07.2021. As a counterblast to the Divorce Petition filed by the respondent, the petitioner
E has filed petition for restitution of conjugal rights. He further submitted that it is a case of irretrievable breakdown of marriage as even during repeated mediations, the parties could not reconcile. This Court can grant divorce under Article 142 of the Constitution of India without consent of the parties. Reliance has been placed upon judgments of this Court in
F *R. Srinivas Kumar v. R. Shametha (2019) 9 SCC 409* and *Munish Kakkar v. Nidhi Kakkar (2020) 14 SCC 657*.

10. Number of other arguments were also raised on merits, however, for the limited purpose of the consideration on the prayer of the petitioner for transfer of the case, the same are not required to be noticed in much detail.

G 11. At the time of hearing, the petitioner was present in-person whereas the respondent had joined through video conferencing.

12. Heard learned counsel for the parties and the parties-in-person.

H 13. The marriage had taken place on 05.12.2020. The parties lived together at their matrimonial home only till 15.01.2021.

14. From a perusal of order dated 17.12.2021, it is evident that there being possibility of settlement of the matrimonial dispute, the matter was referred to Supreme Court Mediation Centre. The Order passed by this Court on 04.03.2022 records that the efforts of mediation failed. The respondent sought time to file affidavit for satisfying the Court that there is an irretrievable breakdown of marriage and this Court should exercise its jurisdiction under Article 142 of the Constitution of India to dissolve the marriage. A
B

15. Order passed by this Court on 25.03.2022 records that another effort was required to be made through mediation for resolution of dispute between the parties. It was referred to Maharashtra State Legal Service Authority. The Marriage Counsellor was also required to be associated. C

16. The order passed by this Court on 02.09.2022 reads as under:

“It appears that the marriage has not worked from the initial period of time itself. The parties got married after having met on facebook. D

The problem is what the wife demands and what the husband says is capable of paying.

Let both the parties file affidavits alongwith list of movable/immovable assets. They should also file their last three years’ Income Tax Returns. E

Two weeks’ time is granted to file necessary affidavits.

List on 29th September, 2022.

The parties to either remain present in the Court or connect virtually for which the connection will be granted by the Registry.” F

17. From the order dated 13.10.2022, it is evident that the petitioner may be working in Canada as she stated that she wound up her work in Canada and is now living in India. They agreed to take assistance of a marriage counsellor. Justice S.J. Vazifdar, former Chief Justice of Punjab and Haryana High Court was appointed as a Mediator. The report has been received from the Mediator stating that despite spending about 50 hours in different sessions, the parties and their family members could not arrive at a settlement and the mediation failed, as per the report dated 08.02.2023. It is specifically recorded by the Mediator in his report G
H

A that during four months, several meetings were held with the parties and throughout the petitioner was in Canada and she attended the meetings through Video Conferencing.

18. Number of Transfer Petitions are filed in matrimonial cases, primarily by the wives seeking transfer of the matrimonial proceedings initiated by the husband. This Court normally has been accepting the prayer made while showing leniency towards ladies. In *Anindita Das v. Srijit Das (2006) 9 SCC 197*, this Court observed that may be this leniency was being misused by women. Hence, each and every case has to be considered on its own merits.

C 19. In the facts of this case in hand, the petitioner is a permanent resident of Canada. She had shifted there in the year 2014 and was working there on a well-paid job, however, came to India for the matrimonial alliance. She is presently based at Mumbai, Maharashtra with her parents and stated to be working in ICICI Bank. There is no child born out of the wedlock. The relation started after the parties met on Facebook. As far as the respondent is concerned, he is a doctor by profession and is living at Mangaluru, Karnataka. Divorce Petition has been filed by the husband at Mangaluru where he resides with his aged parents. Thereafter, the wife filed a petition for restitution of conjugal rights at Mumbai, Maharashtra.

E 20. Considering the status of the parties and the fact that it is a petition filed by the wife seeking transfer of case filed by the husband from Mangaluru, Karnataka to Mumbai, Maharashtra, in our view no case is made out for transfer of the petition from Mangaluru, Karnataka to Mumbai, Maharashtra. The wife is a permanent resident of Canada. She must be travelling abroad regularly. As is evident from the observations in the Mediation Report dated 08.02.2023 submitted by Justice S.J. Vazifdar, the petitioner was in Canada throughout the mediation process and attended the proceedings online. There is no child born out of wedlock to be taken care of. Both the parties are well educated and engaged in their own jobs and professions. She can travel to Mangaluru to attend the hearing of the case and can also seek exemption from appearance whenever required. Though, at present, considering the financial condition of the parties on the basis of material which has come on record, we do not find that any ground is made out for issuing direction to the respondent to pay the expenses to the petitioner for travelling to Mangaluru.

G

H However, still in case she feels like seeking reimbursement of expenses,

she shall be at liberty to file application before the court concerned, A
which may be examined on its own merits.

21. We do not find this to be a fit case for exercise of power under Article 142 of the Constitution of India as good sense may prevail on the parties. They had lived together only for 40 days. It takes time to settle down in marriage. The judgments relied upon by the learned counsel B
for the respondent are distinguishable as in those cases proceedings had travelled up to this Court after decision by the Courts below in divorce proceedings, where the parties had led evidence in old matrimonial dispute. There was sufficient material on record and the ground on which C
the marriage was dissolved in exercise of power under Article 142 of the Constitution of India, was irretrievable breakdown of marriage which otherwise is not a ground in the Hindu Marriage Act, 1955 for dissolution of marriage.

22. As far as appearance of the parties through video conferencing is concerned, sufficient guidance has been given by this Court in the case of *Santhini v. Vijaya Venketesh (2018) 1 SCC 1*. D

23. For the reasons mentioned above, we do not find any merit in the present petition. The same is accordingly dismissed.