

Bombay High Court

Sunita vs Karyalaya on 18 August, 2011

Bench: S. S. Shinde

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

MISC. CIVIL APPLICATION NO. 34 OF 2011

Sunita w/o Baliram Pande,  
Bhistabag Road, Near Professor  
Colony, Age: 39 years,  
Occ: Household,

R/o. N-9, L/108/3/HUDCO,  
Near Radhakrushna Mangal  
Karyalaya, Aurangabad.

...APPLICANT

VERSUS

Baliram s/o Haribhau Pande,  
Age: 40, Occ: Service,  
R/o. N-9,L/108/3, HUDCO,  
Near Radhakrushna Mangal

Karyalaya, Aurangabad.

...RESPONDENT

...

Mr. L.V. Sangit, Advocate holding for

Mrs. M.L. Sangit, Advocate for applicant.  
Mrs. C.E. Gaikwad, Advocate for respondent.

. . .

CORAM : S.S. SHINDE, J.

RESERVED ON : 11-08-2011  
PRONOUNCED ON : 18-08-2011

JUDGMENT :

. Rule. Rule made returnable forthwith.

By consent, heard finally.

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2. This Misc. Civil Application is filed praying therein, the transfer of the proceedings of Hindu Marriage Petition No. 232 of 2010 filed by the respondent herein, before the Court of the Civil Judge, Senior Division, Akola under Section 13 of the Hindu Marriage Act, to the Court of the Civil Judge, Senior Division, Aurangabad.

3. It is the case of the applicant that, the marriage between the applicant and the respondent solemnized on 20-06-1994 at Buldana as per Hindu Rites and Customs. Thereafter, they have started residing at Aurangabad as the respondent is in service in the Company at M.I.D.C. Aurangabad.

. It is the case of the applicant that, in spite of more than 16 years are passed after the marriage, they have not blessed by God, they have taken medical treatment and advice of the Doctor, but in vain. On this ground, the respondent herein filed Hindu Marriage Petition No. 232 of 2010 in 3 mca34.11 the Court of the Civil Judge, Senior Division, Akola under Section 13 of the Hindu Marriage Act for divorce. Hence, this application for transfer of the said proceedings from the Court of the Civil Judge, Senior Division, Akola to the Court of the Civil Judge, Senior Division, Aurangabad.

4. Learned Counsel appearing for the applicant submits that, the applicant is residing at Aurangabad and the respondent is also residing at Aurangabad and therefore, it would be appropriate and in the interest of justice, to transfer the proceedings of H.M.P. No.232 of 2010 from the Court of the Civil Judge, Senior Division, Akola to the Court of the Civil Judge, Senior Division,

Aurangabad. It is further submitted that, the applicant has filed Application No. 814 of 2011 in the Court of the Judicial Magistrate, First Class, Aurangabad under Sections 18, 19, 20 and 22 of the Domestic Violence Act and notices are issued in the said proceedings. Learned Counsel further submitted 4 mca34.11 that, the applicant is not having any separate income or the respondent is not providing any amount to fulfill day today needs of the present applicant and the applicant and respondent are residing in one and the same house at Aurangabad only, and therefore, it would be just and proper in the interest of justice, to transfer the proceedings from the Court of the Civil Judge, Senior Division, Akola to the Court of the Civil Judge, Senior Division, Aurangabad.

. Learned Counsel appearing for the applicant further submits that, Akola is near about 300 kms. away from Aurangabad. Learned Counsel further invited my attention to the grounds taken in the application and submitted that, in a proceeding filed by the husband, convenience of the wife should be looked into.

Learned Counsel in support of his aforesaid contention placed reliance on the judgment of this Court in the case of Savita w/o Vijay Mahajan vs. Vijay s/o Bajirao Mahajan reported in 2008 B.C.I.

5 mca34.11 210 and unreported judgment of this Court in the case of Yogita @ Swati Anil Somwanshi vs Anil Rameshswar Somwanshi in Miscellaneous Civil Application No.35 of 2010 dated 20-06-2011 (Coram: S.S.Shinde, J.). Therefore, it is prayed that, this application may be allowed.

5. On the other hand, learned Counsel appearing for the respondent vehemently opposed the application and submitted that, this Court may not interfere in the impugned order. Learned Counsel also invited my attention to the averments in the affidavit in reply and submitted that, divorce petition before the Civil Judge, Senior Division, Akola is in civil nature and the application filed by the application filed by the applicant is in criminal nature and therefore, the application filed by the application for transfer may not be entertained.

6. I have given due consideration to the rival submissions. It is not in dispute that, the 6 mca34.11 applicant and also the respondent are residing at Aurangabad. It is true that, the applicant being a lady and having no source of income, will not be able to travel 300 kms. from Aurangabad to Akola on every date of hearing. The Hon'ble Supreme Court held that, in a proceeding filed by the husband, convenience of the wife in such proceeding should be looked into.

7. Therefore, in the light of discussion hereinabove, the application is allowed in terms of prayer clause (A). The Record and Proceedings of Hindu Marriage Petition No. 232 of 2010 filed by the respondent herein before the Court of the Civil Judge, Senior Division, Akola under Section 13 of the Hindu Marriage Act against the present applicant stands transferred to the Court of the Civil Judge, Senior Division, Aurangabad. The concerned Court to take appropriate steps to transfer the said proceedings within one week from the receipt of the copy of the order of this Court.

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8. Rule made absolute on the above terms.

Misc. Civil Application is allowed to the above extent and stands disposed of.

sd/-

[S.S. SHINDE, J.] sut/AUG11