

Gujarat High Court

Sonalben vs Present on 31 July, 2008

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Gujarat High Court Case Information System

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MCA/870/2008 7/ 7 JUDGMENT

IN
THE HIGH COURT OF GUJARAT AT AHMEDABAD

MISC.CIVIL

APPLICATION - FOR TRANSFER No. 870 of 2008

For
Approval and Signature:

HONOURABLE
MR.JUSTICE M.R. SHAH

=====

1

Whether

Reporters of Local Papers may be allowed to see the judgment ?

2

To

be referred to the Reporter or not ?

3

Whether

their Lordships wish to see the fair copy of the judgment ?

4

Whether

this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5

Whether

it is to be circulated to the civil judge ?

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SONALBEN
MOHABATSINH RAJPUT - Applicant(s)

Versus

DILIPBHAI
SHIVAJI VAGHELA - Opponent(s)

=====
Appearance :

MR

RC JANI for Applicant(s) : 1,

MR PRATIK B BAROT for Opponent(s) :

1,
=====

CORAM

:

HONOURABLE

MR.JUSTICE M.R. SHAH

Date

: 31/07/2008

ORAL

JUDGMENT

1. Present application is submitted by the applicant wife under Section 24 of the Code of Civil Procedure for an appropriate order to transfer the proceedings i.e H.M.P No 50 of 2007 from the

Court of learned Principal Senior Civil Judge, Patan to the Court of learned Principal Senior Civil Judge, Mehsana, where the petition filed by the present applicant i.e. H.M.P. No. 2 of 2008 is pending.

2. Applicant herein wife had instituted one H.M.P. No. 2 of 2008 before the learned Principal Senior Civil Judge, Mehsana against the respondent husband, under Section 9 of the Hindu Marriage Act for restitution of conjugal rights. That the respondent husband has also filed one H.M.P. No. 50 of 2007 before the learned Principal Senior Civil Judge, Patan against the applicant wife under Section 13 of the Hindu Marriage Act for divorce.

3. It is submitted that the applicant is a lady and she is residing at her parental house with her parents and has no independent income to meet with the traveling and other expenses on attending the Court at Patan on every date of adjournments. It is submitted that it will be very difficult for the applicant to move the Patan at every adjournments of the said petition. It is further submitted that and even otherwise, considering the fact that application submitted by the applicant for restitution of conjugal rights under Section 9 of the Hindu Marriage Act is pending in the Court at Mehsana, it will be in the fitness of things that both the proceedings are heard by one Court at Mehsana to avoid any duplication of the evidence etc. Shri Jani, learned advocate for the applicant has heavily relied upon the decision of the Hon'ble Supreme Court in the case of Sumitra Singh Vs. Kumar Sanjay reported in AIR 2002 SC 396, in support of his contention. As observed by the Hon'ble Supreme Court in a matrimonial dispute while considering Section 24 of the Code of Civil Procedure normally the convenience of the wife is required to be considered. Therefore, it is requested to allow the present application and to transfer the proceedings pending in the Court of Patan to Court at Mehsana and to hear both the proceedings together by one Court.

4. Application is opposed by Shri Pratik Barot, learned advocate for the respondent-husband. It is submitted by Shri Barot, learned advocate for the respondent that merely because, the applicant is lady and has no independent income is no ground to transfer the proceedings from Patan Court to Mehsana Court. It is submitted that even the husband is required to go and defend the case at Mehsana. Shri Barot, learned advocate for the respondent-husband has relied upon the following decisions of the Hon'ble Supreme Court, in support of his submissions and prayer to dismiss the present application.

1. (2004) 13 SCC, 634, Kamudi Aurora Vs. Surinder Pal Singh Aurora.

2. (2005) 11 SCC, 535, Preeti Sharma Vs. Manjit Sharma.

3. (2005) 11 SCC, 446, Gargi Konar Vs. Jagjeet Singh

4. (2006) 9 SCC, 197, Anindita Das Vs. Srijit Das.

5. Heard the learned advocate for the respective parties and considered the decisions relied upon by the learned advocate for the respective parties referred to herein above. On considering the various decisions relied upon by the learned advocate for the respondent-husband referred to herein above,

it cannot be said that the Hon'ble Supreme Court has laid down absolute proposition of law as sought to be canvased on behalf of the respondent-husband that on the aforesaid ground there cannot be transfer of proceedings. Ultimately it depends upon the facts of each case. In the case of Sumitra Singh (supra), the Hon'ble Supreme Court has specifically laid down that in matrimonial matter while considering Section 24 of the Code of Civil Procedure convenience of the wife is required to be considered. Even otherwise, considering the fact that there are two proceedings pending in different Courts one initiated by the wife and another initiated by the husband, one is for restitution of conjugal rights under Section 9 of the Hindu Marriage Act and another for divorce under Section 13 of the Hindu Marriage Act and even to avoid multiplicity of proceedings and to avoid multiplicity of leading evidence, it will be in the fitness of things that both the proceedings are heard together by one Court and the same will not only save the time of the litigant as well as the Court but the same may avoid conflicting order. It may happen that the Court at Mehsana in which the application for restitution of conjugal rights at the instance of the wife is pending, may pass a decree for restitution of conjugal rights and on the other the Court at Patan before whom the proceedings are pending at the instance of the husband for divorce under Section 13 of the Hindu Marriage Act may pass decree of divorce and, therefore, there will be two conflicting orders /judgment and decree by two different Courts between the same parties and therefore, to avoid such a situation eventuality, this Court is of the opinion that it will be in the fitness of things that both the proceedings may be heard together by one Court and, therefore, also the proceedings pending in the Court at Patan are required to be transferred at Mehsana and both are required to be heard together by one Court.

6. Under the circumstances and for the reasons stated above, the application succeeds and it is ordered that H.M.P No. 50 of 2007 pending in the Court of learned Civil Judge, Patan be transferred to the Court of learned Principal Senior Civil Judge, Mehsana and the same is heard along with H.M.P. No. 2 of 2008 pending in the Court of learned Principal Senior Civil Judge, Mehsana and both are heard and decided together by one Court. Rule is made absolute, There shall be no order as to costs.

(M.R.SHAH.

J.) kaushik Top