



Shakuntala

IN THE HIGH COURT OF BOMBAY AT GOA

TRANSFER APPLICATION NO.2 OF 2024

URMI UMESH NAIK
@ ROSHAN BORKAR

...APPLICANT

VERSUS

UMESH NAIK

...RESPONDENT

Mr. Sagar Sarmalker, Advocate for the Applicant.

Mr. Pradosh Dangui, Advocate for the Respondent.

CORAM:- BHARAT P. DESHPANDE, J.

DATED :- 05th September, 2024

ORAL ORDER.

1. Heard Sagar Sarmalker learned counsel for the Applicant and Mr. Pradosh Dangui learned counsel for the Respondent.

2. The present application is filed for transfer of which is pending before the Bicholim Court, to the Margao Court wherein the Applicant/Wife is residing as well as pendency of the maintenance case.

3. Mr. Sarmalker learned counsel for the Applicant submits that the matrimonial petition is filed in the year 2019 whereas the maintenance case is pending from the year 2017. He submits that the Applicant is fully dependent on her parents

and recently, her father expired. Her mother is around 75 years old.

4. He submits that the Applicant is facing hardship to travel from Margao Court to Bicholim Court for attending the matrimonial petition and till date the maintenance proceedings are not decided. He submits that no hardship will be caused to the Respondent who is otherwise employed in G.M.C., Bambolim as a Driver and has to attend G.M.C. daily for his service purpose.

5. Mr. Dangui learned counsel appearing for the Respondent would submit that only because an application is filed by the wife, the proceedings need not be transferred to Margao Court. He submits that the matter before the Bicholim Court has progressed and is now kept for evidence of the Respondent. He further submits that the Applicant is working and maintaining herself and would not be having any inconvenience to attend the Bicholim Court physically or through Video Conferencing.

6. He further submits that the contentions raised by the Applicant in the application are denied by the Respondent and there is no hardship caused to her if she attends the

proceedings in the Bicholim Court.

7. Admittedly, the maintenance proceedings are filed in the year 2017 whereas the matrimonial petition is filed by the Respondent in the year 2019.

8. The father of the Applicant expired recently and she is now residing with her mother who is around 75 years old. It is a fact that interim maintenance application was rejected, however, till date maintenance application is pending and not yet decided.

9. Mr. Sarmalker now submits that the Applicant has now requested for an Advocate from the Legal Aid Panel which has been provided to her. He submits that there is no material to show that the Applicant is working at present.

10. The decision relied upon by Mr. Dangui in the case of ***Usha George Vs. Koshy George, (2000) 10 SCC 95*** turns on its own facts and the same cannot be considered for deciding the present application.

11. In the case of ***Krishna Veni Nagam Vs. Harish Nagam, MANU/SC/0273/2017***, the Apex Court was considering an application for transfer filed by the wife from Family Court Jabalpur, Madhya Pradesh to the Family Court at Hyderabad.

In that matter, the Apex Court observed that if such transfer is allowed, the husband will be facing difficulty in attending the proceedings. Such is not the situation in the present matter. The distance between Bicholim to Margao is hardly 50 kilometers and the Respondent is travelling half the way to attend his job which is at Bambolim, GMC. The distance between Bambolim and Margao is only 30 kilometers.

12. The petition of maintenance is pending from the year 2017 and the Applicant has to attend the said Court as well as the matrimonial petition filed before the Bicholim Court. Certainly, the Applicant shall face hardship by travelling to Bicholim Court from Margoa for attending the matrimonial petition specifically when she is residing with her old aged mother. As compared to this, the Respondent will not be having any hardship since he has to attend the job situated at Bambolim.

13. In the case of *Irene Blanch Khera Vs. Glenn John Vijay, 2018 (6) Mh. L. J.*, the learned Single Judge of this Court after discussing extensively the case law in this aspect observed that the matter needs to be transferred where the wife resides. The said observation are squarely applicable to the

matter in hand. Accordingly, the matrimonial petition pending before the Bicholim Court bearing No.11/2019/A is transferred to Margao Court.

14. The application is accordingly, allowed.
15. Parties to act on authenticated copy of the said order.

BHARAT P. DESHPANDE, J.