

2023 SCC OnLine Guj 2654

In the High Court of Gujarat at Ahmedabad
(BEFORE J.C. DOSHI, J.)

Madhuri

Versus

Lalit Shankarlal Gangvani

R/Misc. Civil Application No. 304 of 2023

Decided on August 22, 2023

Advocates who appeared in this case :

M.S. Padaliya(7406) for the petitioner(s) No. 1

Mr. Abrarali A Ghori(12282) for the petitioner(s) No. 1

Unserved Refused (N) for the Opponent(s) No. 1

The Order of the Court was delivered by

J.C. DOSHI, J.:— In this petition filed under section 24 of the Civil Procedure Code, 1908, the petitioner has prayed to transfer Family Suit No. 102 of 2022 pending before the learned 6th Addl. Senior Civil Judge, Gandhidham - Kachchh to learned Family Court, Jamnagar *inter alia* on the ground of convenience.

2. It is the case of the petitioner that the petitioner got married with the respondent on 07.12.2011 at Gandhidham according to Hindu Rights and the petitioner is the legally wedded wife of the respondent herein. It is submitted that out of wedlock they have one Child namely 'Prakash' who is with the petitioner mother. That the petitioner submits that since then, the petitioner-wife was residing with the respondent-husband as legally wedded wife of the respondent herein, but after some time, the respondent and his family members started demanding dowry from the petitioner and her parents, which could not be managed by the parents of the petitioner and therefore, the respondent-husband & his family members started harassing the petitioner and the petitioner has been driven out of the matrimonial home and she was compelled to stay with her parents at Jamnagar. The petitioner submits that the petitioner was harassed by the in-laws of the respondent including the husband of the petitioner i.e. the respondent herein and the petitioner was driven out from the house.

3. In background of above facts, the respondent has filed Family Suit No. 102 of 2022 under section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights before the learned 6th Addl. Senior Civil Judge, Gandhidham - Kachchh.

4. In view of above, the petitioner has approached this Court under

section 24 of the Code of Civil Procedure seeking relief to transfer Family suit No. 102 of 2022 from learned 6th Addl. Senior Civil Judge, Gandhidham - Kachchh to learned Family Court, Jamnagar inter-alia on the ground that she is facing difficulty to attend proceedings at Civil Court, Gandhidham-Kachchh, as she has to travel 250 kms. from Jamnagar to Gandhidham along with her minor son.

5. Heard learned advocate Mr. MS. Padaliya for the petitioner. Though served, none remain present for the other side. No objection has been raised by other side.

6. Pressing into service judgment in the case of *Tejalben v. Mihirbhai Bharatbhai Kothari* [(2016) 3 SCC 69 : AIR 2016 SC 718], it is sought to be submitted by learned advocate for the petitioner that the petitioner is lady living in Jamnagar along her parents at parental home. She is keeping minor son aged 05 years with her. It is also submitted that all other proceedings arising out of dispute between the parties are pending at different Courts at Jamnagar but Family Suit is pending at Family Court, Gandhidham.

7. Learned advocate for the petitioner would submit that Jamnagar is 250 kms apart from Gandhidham. On every date, the petitioner has to come from Jamnagar to Gandhidham, which is quite inconvenience for the petitioner to attend the proceedings every time. Therefore, he would submit that the petitioner is urging to transfer Family Suit only on the ground of inconvenience she is facing. Learned advocate for the petitioner would further submit that in case Family Suit is transferred from Civil Court, Gandhidham to Family Court, Jamnagar, the petitioner shall not seek expenses for transportation she had borne for attending the proceedings. Upon such submissions, he requested to allow the petition.

8. In the case of *Sumita Singh v. Kumar Sanjay* [(2001) 10 SCC 41 : AIR 2002 SC 396], the Apex Court has observed that wife's inconveniency must be given due importance while deciding transfer petition. It is to be noted that power under section 24 of the CPC is discretionary power. The Court may or may not exercise discretion. However, when such discretion is to be exercised it must be guided by settled principle of law. To be noted that the petitioner has sought relief only on the ground of inconvenience. Fairness of judicial proceedings is not questioned. No allegations of bias in the proceedings is levelled against Judicial Officers. Thus convenience as stated earlier must be considered more particularly in background of the fact that travelling from Jamnagar to Gandhidham is quite difficult as both cities apart 250 kms. It is difficult for the lady to attend proceedings at Civil Court, Gandhidham. One may also keep in mind that son is 5 years old. Thus, inconvenience which is pinpointed in the petition can be visualized and could be given importance as well.

9. In view of above peculiar facts and circumstances and for the foregoing reasons, this petition deserves consideration. Accordingly, the petition is allowed. Family Suit No. 102 of 2022 pending at learned 6th Addl. Senior Civil Judge, Gandhidham-Kachchh is hereby transferred to Family Court, Jamnagar for disposal in accordance with law.

10. Direct service is permitted.

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