

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/MISC. CIVIL APPLICATION (FOR TRANSFER) NO. 1109 of 2023

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PREETAL W/O PRANEEL SOLANKI
Versus
PRANEEL MAHESHKUMAR SOLANKI

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Appearance:

MR JAPAN V DAVE(5947) for the Applicant(s) No. 1

MANAN V PATEL(8059) for the Opponent(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE DEVAN M. DESAI

Date : 29/11/2023
ORAL ORDER

1. By invoking jurisdiction of Section 24 of the Code of Civil Procedure, the applicant-wife has sought for the following reliefs,

a. Your Lordships be pleased to admit this application.

b. Your Lordships be that the Family Suit No.452 of 2023 at Annexure-A pending on the file of Family Court, Surat be transferred to the Family Court, Dahod.

c. Your Lordships be pleased to order that the further proceedings of the Family Suit No.452 of 2023 at Annexure-A pending on the file of Family Court, Surat be transferred to the Family Court, Dahod be stayed pending admission, hearing and final disposal of this petition.

d. Your Lordships be pleased to grant such other order and further relief/s that may deemed fit in the facts and circumstances of the case.

2. Heard learned advocate Mr. Japan V. Dave for the applicant and learned advocate Mr. Manan V. Patel for the respondent.

3. Learned advocate for the applicant has submitted that the respondent-husband has filed a petition under Section 9 of the Hindu Marriage Act for restitution of conjugal rights being Family Suit No.452 of 2023 before the Family Court, Surat. It is further submitted by the learned advocate for the applicant-wife that the applicant-wife is not residing at Dahod as she has gone to Canada for further study and at present, she is residing in Canada. It is further submitted that because of the aforesaid reason, the applicant-wife cannot remain present at Dahod to attend the Court proceedings. It is further submitted that the father of the applicant has passed away on 31st May, 2023 and at present, the mother of the applicant is having power of attorney and as per the submission of the learned advocate for the applicant, if the Family Suit No.452 of 2023 is transferred from Family Court, Surat to Family Court, Dahod, the mother of the applicant will represent the applicant-wife and would contest the petition. It is further submitted by the learned advocate for the applicant that the distance between Surat - Dahod is around 300 kilometers and the traveling time would be around approximately 5 to 6 hours one way and the mother of the applicant is aged about 62 years old. If the petition is not transferred, the mother of the applicant being an old lady will have to travel from Dahod to Surat, which would cause undue hardships to her also.

4. Per contra, learned advocate for the respondent has objected and placed reliance upon the averments made in the affidavit-in-reply, which is placed on record. Learned advocate for the respondent has pointed out from the affidavit-in-reply that the applicant-wife has been doing work in Canada and she is earning handsome income. Learned advocate for the respondent has also submitted that if the applicant has any difficulty in bearing the expenses of the traveling, the respondent-husband is ready and willing to compensate such expenses. He has further submitted that the relatives of the applicant are also residing at Surat and they can also take care of the proceedings. It is further submitted that now-a-days, in Family Courts, proceedings are also persuaded through Video Conferencing and the facility of Video Conferencing is available. In view of this fact, he has further submitted that the applicant-wife can represent herself from Canada through Video Conferencing and merely because the applicant-wife is residing in Canada and she is unable to remain present in Court, is not a fair ground, whereby discretionary power under Section 24 of the Code of Civil Procedure can be exercised by this Court.

4.1 In support of his submissions, learned advocate for the respondent has also placed reliance upon the decision of Hon'ble Apex Court in the case of ***Delma Lubna Coelho Vs.***

Edmond Clint Fernandes 2023 LawSuit(SC) 394, which is part of the affidavit-in-reply.

5. Having considered the rival submissions and having considered the averments made in the application, the first reason which has been canvassed by the learned advocate for the applicant is that the applicant-wife is staying in Canada for further study and because of the said reason, she cannot attend the proceedings at Surat Court and the second ground for seeking transfer of the said Suit is that the mother of the applicant who is aged about 62 years old can not attend the Court proceedings at Surat. It is to be considered that the applicant-wife has gone to Canada in the year 2020 and the applicant-wife can certainly attend the Court proceedings through Video Conferencing, the grounds stated in the petition are not worth considering and the grounds are as such, the discretionary power cannot be exercised, more particularly, as observed above, the Family Courts are having the facility of Video Conferencing which can be availed by the parties and more particularly, the applicant can also represent herself through Video Conferencing from Canada. In the case of ***Delma Lubna Coelho (supra)***, the Hon'ble Apex Court has observed in paragraphs No.18, 20 and 22, which are reproduced as hereinbelow:-

[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.

[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. However, still in case she feels like seeking reimbursement of expenses, she shall be at liberty to file application before the court concerned, which may be examined on its own merits.

[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.

6. Keeping in mind the above observations of the Hon'ble Apex Court and in the background of the factual aspects of the application, this Court is not inclined to exercise the discretionary power under Section 24 of the Code of the Civil Procedure by allowing the present application. In view of the above fact, this application lacks merits and deserves to be dismissed and this application is dismissed.

7. It is needless to mention that this Court has not gone into the merits of the case of this matter as well as rival contentions of both the parties and the learned Court below shall decide the Family Suit No.452 of 2023, strictly, in accordance with law.

RINKU MALI

(D. M. DESAI,J)