

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
MISC.CIVIL APPLICATION - FOR TRANSFER No. 1489 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 ?

=====

=

**MEGHNABEN W/O YOGESHKUMAR BABULAL MEVADA -
Applicant(s)**

Versus

YOGESHKUMAR BABULAL MEVADA - Opponent(s)

=====

=

Appearance :

MS BELA PRAJAPATI WITH MR BM MANGUKIYA for Applicant(s) : 1,

MR EE SAIYED AND MRS MUMTAZ SAIYED for Opponent(s) : 1,

=====

=

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 31/07/2008

ORAL JUDGMENT

1. Heard Ms Bela Prajapati, learned advocate with Shri B.M.

Mangukiya appearing on behalf of the applicant-wife and Shri E.E. Saiyed, learned advocate with Ms Mumtaz Saiyed for the opponent-husband.

2. The present application is filed by the applicant, Meghnaben, wife of Shri Yogeshkumar Babulal Mevada, opponent under Section 24 of the Civil Procedure Code seeking transfer of Hindu Marriage Petition No. 10/2008, pending in the Court of learned 4th Additional Senior Civil Judge, Palanpur to the learned Family Court, Ahmedabad.

3. It is the case on behalf of the applicant that she married the opponent on 28/03/2002 and they were staying in joint family. It is submitted that after six months of their marriage, harassment was started by the in-laws mentally and physically as the applicant could not meet with the demand of dowry. It is submitted that therefore the applicant was compelled to leave her matrimonial house and go to her parents house with her minor child. It is submitted that the applicant has no independent income and for her livelihood, she has preferred an application under Section 125 of the Criminal Procedure Code, being Criminal Miscellaneous Application No. 96/2008 before the learned Family Court at Ahmedabad on 11/01/2008. After the said application was filed by the applicant, the opponent-husband has preferred Hindu Marriage Petition No. 10/2008 under Section 13 of the Hindu Marriage Act for divorce. The opponent-husband had also preferred Civil Miscellaneous Application No. 13/2008 under Section 8 of the Guardians and Wards Act for custody of the minor child. It is submitted that the petition has been filed by the opponent-husband only with a view to harass the applicant and as a

counter blast. It is submitted that as such even considering Section 9(1) of the Guardians and Wards Act, the application at Palanpur is not maintainable as the Palanpur Court would not have jurisdiction to hear the case as the application for custody of the child/ward would be maintainable only in the Court where the child/ward is residing. It is submitted that the minor child is residing with the applicant at Ahmedabad and, therefore, it is requested to transfer the proceedings from Palanpur Court to Ahmedabad.

3. Having heard the learned advocates for the respective parties and having considered the averments made in the application, it appears that the applicant-wife is residing with her minor child at her parents house at Ahmedabad and she has also initiated the proceedings under Section 125 of the Code of Criminal Procedure in the Family Court at Ahmedabad for maintenance. It appears that subsequently, the opponent-husband has filed Hindu Marriage Petition No. 10/2008 for divorce and Miscellaneous Civil Application No. 13/2008 under the Guardian and Wards Act for getting custody of the minor child. Under Section 9(1) of the Guardian and Wards Act, custody of the child would be maintainable only in the Court where the child/ward is residing, and in the present case, the child is residing at Ahmedabad. It is required to be noted that the distance between Ahmedabad and Palanpur is more than 300 kms. and, therefore, it will be inconvenient for the applicant-wife to attend the proceedings at Palanpur with her minor child. It is held by the Hon'ble Supreme Court in the case of **SUMITA SINGH Vs KUMAR SANJAY** reported in **AIR 2002 SC 396** that in the matrimonial proceedings, under Section 24 of the Civil Procedure Code, it is the convenience of

the wife that must be looked at.

4. For the reasons stated hereinabove, the present Miscellaneous Civil Application is required to be allowed. Hindu Marriage Petition No. 10/2008, pending in the Court of learned 4th Additional Senior Civil Judge, Palanpur is hereby ordered to be transferred to the learned Family Court, Ahmedabad. With this, the present Miscellaneous Civil Application is allowed. Rule made absolute accordingly. There shall be no order as to costs.

(M.R. SHAH, J.)

siji