

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
MISC.CIVIL APPLICATION - FOR TRANSFER No. 1979 of 2008

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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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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SAPNA NARENDRAKUMAR AGGARWAL - Applicant(s)

Versus

NARENDRAKUMAR PREMPRAKASH AGGARWAL - Opponent(s)

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Appearance :

MR RAMNANDAN SINGH for Applicant(s) : 1,

MR EE SAIYED for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 31/07/2008

ORAL JUDGMENT

1. Heard Shri Ramnandan Singh, learned advocate

appearing on behalf of the applicant-wife and Shri E.E. Saiyed, learned advocate appearing on behalf of the opponent-husband.

2. The present application is filed by the applicant-wife, Sapna Narendrakumar Agarwal under Section 24 of the Civil Procedure Code to transfer H.M.P. No. 15/2008, pending in the Court of learned Senior Civil Judge, Surat to learned Senior Civil Judge, Vadodara.

3. It is the case on behalf of the applicant that the marriage of the applicant and the opponent was solemnised on 29/04/2004 at Vadodara. It is submitted that after marriage, they had started residing at Surat. Thereafter, the family members of the opponent started harassing the applicant mentally and physically for dowry. As the applicant and her family members could not meet with the demand of Rs. 1,50,000/- as dowry, she was driven out of her matrimonial house and is now residing at Vadodara at her parents house. It is submitted that the applicant had filed Criminal Case No. 660/2008 in the Court of learned JMFC, Court No. 4, Vadodara and had also filed petition for maintenance under Section 125 of the Criminal Procedure Code, being Criminal Miscellaneous Petition No. 54/2008. It is submitted that having come to know that the applicant had filed criminal case and petition for maintenance, as a counter blast, the opponent had filed H.M.P. No. 15/2008, pending before the learned Senior Civil Judge, Surat. It is submitted that the aforesaid H.M.P is filed at Surat only with a view to harass the applicant. The applicant has two minor children of two and three years, and, therefore, it will not be convenient for the applicant to attend the proceedings

at Surat on each and every adjournment physically as well as financially.

4. Learned advocate appearing on behalf of the applicant has heavily relied upon the decision of the Hon'ble Supreme Court in the case of **SUMITA SINGH Vs KUMAR SANJAY** reported in **AIR 2002 SC 396**. It is submitted that as observed by the Hon'ble Supreme Court, it is the convenience of the wife that must be looked at.

5. Shri E.E. Saiyed, learned advocate appearing on behalf of the opponent has tried to oppose the present application. However, he is not in a position to dispute the allegations made in the application.

6. Heard the learned advocates appearing on behalf of the respective parties. It is not in dispute that the applicant-wife is residing at Vadodara with her parents alongwith two minor children aged two and three years. The proceedings have been initiated by the applicant in the Court of Vadodara, which is prior to the application filed by the opponent-husband. It appears that subsequently the opponent-husband has initiated the proceedings for divorce in the Surat Court as a counter blast and with a view to harass the applicant. It will be inconvenient for the applicant-wife to travel to Surat to attend the Court at Surat on each and every adjournment with two minor children aged two and three years. As held by the Hon'ble Supreme Court in the case of **SUMITA SINGH Vs KUMAR SANJAY** (supra), in the matrimonial proceedings, under Section 24 of the Civil Procedure Code, it is the convenience of the wife that must be looked at.

7. For the reasons stated hereinabove, the present Miscellaneous Civil Application is required to be allowed. H.M.P No. 15/2008, pending in the Court of learned Senior Civil Judge, Surat is hereby ordered to be transferred to the learned Senior Civil Judge, Vadodara. 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.)

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