

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

Transfer Petition (Civil) No. 641 of 2022

SWATI SUBIR GORADIA

Petitioner(s)

VERSUS

SUBIR AMIT GORADIA

Respondent(s)

WITH

T.P.(C) No. 848 of 2022

T.P.(CrI.) No. 312 of 2022

T.P.(C) No. 836 of 2022

O R D E R

These four Transfer Petitions, essentially concerning the same principal contesting parties and having inter-related issues, have been considered together and are taken up for disposal by this common order.

In these Transfer Petitions, the petitioner, being the wife in the estranged marriage, has sought transfer of three appeals pending before the High Court of Gujarat, being Special Civil Application No. 3320/2020, Special Civil Application No. 21700/2019 and First Appeal No. 5173/2020 as also one appeal pending before the District and Sessions Judge at Vadodara, being Criminal Misc. Appeal No. 229/2019 to the High Court of Judicature at Bombay ('the Bombay High Court').

The basic reason for seeking transfer of the matters from one State to another by the petitioner is with reference to the order dated 14.02.2022, as passed by this Court in a batch of four

transfer petitions led by Transfer Petition (C) No. 303/2020 whereby, the main cases pertaining to the aforesaid matters in appeal, have already been transferred from Vadodara to the competent Courts at Mumbai.

The said order dated 14.02.2022, in its entirety, reads as under:-

"1. The present petitions have been filed by the petitioner-wife, praying, *inter alia*, for transferring the five sets of matters pending between the parties as enumerated herein below:

i. Custody petition CMA No. 116/2017, titled "Subir Amit Goradia vs. Swati Subir Goradia" filed by the respondent-husband.

ii. Divorce petition being HMP No. 1158/2017, titled "Subir Amit Goradia vs. Swati Subir Goradia" filed by the respondent-husband.

iii. Divorce petition being Family Suit No. 819 of 2018, titled "Goradia vs. Subir Amit Goradia and Anr., filed by the petitioner-wife against the respondent-husband and another.

iv. Maintenance petition being Crl. Misc. Application No. 1073 of 2018, titled "Swati Subir Goradia & Anr vs. Subir Amit Goradia", filed by the petitioner-wife against the respondent-husband.

v. Domestic Violence case being Crl. Misc. Application No. 1159 of 2018, titled "Swati Subir Goradia vs. Subir Amit Goradia & Ors." filed by the petitioner-wife against the respondent-husband and her in-laws.

2. All the aforesaid petitions are presently pending before the competent Courts at Baroda, Gujarat. The petitioner-wife seeks transfer of the said petitions to the competent Courts at Mumbai, Maharashtra.

3. Heard the learned counsel for the parties. Ms Meenakshi Arora, Senior Advocate appearing for the respondent no. 2 in the Divorce Petition filed by the petitioner-wife states that her client is residing and working for gain at Ahmedabad and is suffering from some ailments due to which she may face difficulty both on the health front and financially, to travel from Baroda to Mumbai.

4. Ms. Megha Jani, Advocate, who appears for the respondents no. 2 and 3 in Transfer Petition No. 135 of 2020, who happen to be the parents of the respondent-husband, submits that her clients are senior citizens and would find it difficult to travel from Baroda to Mumbai to attend the proceedings.

5. It is not in dispute that there are direct flights that connect Baroda and Ahmedabad and Baroda and Mumbai. Therefore, the difficulty expressed on the part of the parents of the respondent-husband in travelling from Baroda to Mumbai is not persuasive. However, the financial difficulty expressed by Ms. Meenakshi Arora, Senior Advocate appearing on behalf of the respondent No. 2 in Transfer Petition No. 403 of 2020 appears to be a valid ground. This Court has posed a query to Mr. Neeraj Kishan Kaul, Senior Advocate appearing for the petitioner-wife as to whether the petitioner would be willing to bear the commuting, boarding and lodging expenses that may be incurred by the respondent No. 2, whenever she is summoned to appear before the competent Court at Mumbai. After obtaining necessary instructions, learned Senior Advocate states that the petitioner is willing to bear the expenses of travel and boarding/ lodging of the respondent No. 2 whenever the concerned Court summons her to appear in the matter.

5. In view of the above, it is deemed appropriate to allow the present petitions and direct the concerned courts to remit the relevant records forthwith from Baroda to the Competent Courts at Mumbai for the matter to proceed further from the point at which they were at the relevant point in time.

6. The petitions are disposed of along with the pending applications(s), if any."

It has been submitted on behalf of the petitioner that Special Civil Application No. 3320/2020 as also Special Civil Application No. 21700/2019 are the matters pending before the High Court of Gujarat arising out of orders passed in CMA No. 116/2017, being a custody case filed by the respondent-husband. It is submitted that when the main case has already been transferred to Mumbai, the appeals arising from interim/interlocutory order passed therein

deserve to be heard by the Bombay High Court. It is further submitted that Civil First Appeal No. 5173/2020, filed by respondent No.2, being an appeal challenging the rejection of an application moved under Order VII Rule 11 of the Code of Civil Procedure, 1908 ('CPC') in Family Suit No. 819/2018, also deserves to be heard by the Bombay High Court, for the reason that the main case, being Divorce Petition filed by the petitioner-wife, has already been transferred to Mumbai. In continuity, it is further submitted that CMA No. 229/2019, being also an appeal challenging an interim order passed in CMA No. 1159/2018, deserves to be heard by the jurisdictional Court at Mumbai for the reason that the main petition has been transferred to Mumbai.

In response to our queries, learned counsel appearing for the petitioner has submitted that as per his instructions, the appellate jurisdiction in relation to the subject-matter of CMA NO. 229/2019 is with the High Court and, therefore, that appeal also deserves to be transferred to the Bombay High Court.

The present transfer applications have been opposed by learned counsel appearing for the contesting respondents. Learned counsel appearing for the respondent-husband has strenuously argued that even if the main matters were ordered to be transferred by this Court on 14.02.2022, that had been on the consideration of convenience of the petitioner-wife but then, the present matters, being essentially of appeals, the same consideration of convenience would not apply inasmuch as the appeals are essentially to be argued by the learned counsel on instructions by the respective parties. Learned counsel has, thus, submitted that when the

personal presence of the parties is not required in the matter, seeking transfer of the appeals is not justified on the part of the petitioner. It has also been submitted that as per Section 19 of the Family Courts Act, 1984, an appeal against the order passed by a Family Court would only be maintained before the jurisdictional High Court and in view of the fact that the orders impugned in the subject appeals were passed by the jurisdictional Courts at Vadodara, the appeals have rightly been filed before jurisdictional Appellate Court, including Gujarat High Court and they deserve not to be transferred to a different High Court.

It is submitted that there is no specific reason forthcoming on the part of the petitioner in seeking transfer of the pending appeals; and the transfer may not serve the cause of justice.

Learned counsel appearing for respondent No. 2 in Transfer Petition (C) No. 836/2022, while adopting the submissions aforesaid, has further submitted that respondent No.2 has unnecessarily been entangled in this litigation and in any case, the appeal filed by her, questioning the order rejecting the application under Order VII Rule 11 CPC, deserves to be heard by jurisdictional High Court where the appeal has been filed. Learned counsel, in the alternative, has also drawn our attention to the other provisions made in the order dated 14.02.2022, protecting the interest of respondent No.2, particularly as regards her expenses.

Learned counsel appearing for the other contesting respondents in Transfer Petition (Crl) No. 312/2022, being the parents of the respondent-husband, would submit that the proceedings of Criminal Misc. Application No. 1159/2018 were adopted by the

petitioner-wife herself complaining of the alleged domestic violence and the interlocutory orders passed therein, directing the respondents to submit income tax returns, have rightly been challenged in the jurisdictional Appellate Court, which deserves not to be transferred to any other Court.

Having given thoughtful and anxious consideration to the submissions and after having examined the matter in its totality, we are clearly of the view that when the original proceedings have already been transferred to the competent Court at Mumbai and the appeals under consideration in each of these Transfer Petitions arise out of interim/interlocutory order passed in those main proceedings, it would be in the fitness of things and serving the cause of justice that the appeals be also heard by the jurisdictional High Court relating to the relevant competent Court at Mumbai, who would now be dealing with each of the aforesaid original proceedings. The said jurisdictional High Court being the High Court of Judicature at Bombay, we find no reason to allow the pending appeals to proceed before the High Court of Gujarat.

As regards prosecution of those appeals, personal presence of the parties may not be required as such but then, appropriate consideration of the subject-matter and passing of the appropriate orders after hearing the parties will have direct bearing on the pending proceedings; and since the proceedings are pending before the competent Courts at Mumbai, for the proper and effective orders to be passed and the proceedings to be taken forward appropriately, it is expedient that these appeals are also heard by the competent Court at Mumbai, being the High Court. Therefore, we are inclined

to transfer these proceedings to the Bombay High Court.

With regard to Transfer Petition (Cr1) No. 312/2022, we also deem it appropriate to observe that at present, the proceedings are being ordered to be transferred from the Court of District and Sessions Judge, Vadodara to the Bombay High Court. We would, however, leave it open for the High Court to order its transfer to any other Court within its jurisdiction, if so required and if so considered appropriate.

As regards respondent No. 2, we would reiterate what has been provided for in the first paragraph 5 of the order dated 14.02.2022 that the petitioner would be required to bear all the expenses of travelling, boarding and lodging of the respondent No. 2 whenever she might be required to attend the proceedings. Apart from the above, we also deem it appropriate to provide that the parties may make a request for their appearance through respective counsel and/or in virtual mode. Any such request may be given due consideration by the High Court.

These Transfer Petitions stand allowed in the manner and to the extent indicated above.

The copies of this order be forwarded to the Registrars General of the respective High Courts for necessary compliance.

....., J.
[DINESH MAHESHWARI]

....., J.
[SUDHANSHU DHULIA]

New Delhi;
November 10, 2022.

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Transfer Petition(s)(Civil) No(s). 641/2022

SWATI SUBIR GORADIA

Petitioner(s)

VERSUS

SUBIR AMIT GORADIA
(IA No. 40542/2022 - EX-PARTE STAY)

Respondent(s)

WITH

T.P.(C) No. 848/2022 (XVI-A)
(FOR ADMISSION and IA No.56000/2022-EX-PARTE STAY)T.P.(Cr1.) No. 312/2022 (XVI-A)
(FOR ADMISSION and I.R. and IA No.61858/2022-EX-PARTE STAY)T.P.(C) No. 836/2022 (XVI-A)
(IA No. 127965/2022 - APPLICATION FOR TAGGING/DETAGGING)

Date : 10-11-2022 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE DINESH MAHESHWARI
HON'BLE MR. JUSTICE SUDHANSHU DHULIAFor Petitioner(s) Mr. Neeraj Kishan Kaul, Sr. Adv.
Mr. Aarzo Aneja, Adv.
Ms. Shilpa Ohri, Adv.
Mr. Siddhant Kumar Singh, Adv.
Mr. Shohit Chaudhry, AORFor Respondent(s) Mr. Abhinav Agrawal, AOR
Ms. Megha Jani, Adv.Mr. Nikhil Nayyar, Sr. Adv.
Mr. Anand Varma, AOR
Mr. Ayush Gupta, Adv.Ms. Mrunalini Deshmukh, Adv.
Mr. Mahesh Agarwal, Adv.
Mr. Shubham Kulshreshtha, Adv.
Ms. Kamakshi Sehgal, Adv.
Mr. Karan Verma, Adv.
Mr. E. C. Agrawala, AOR

UPON hearing the counsel the Court made the following

O R D E R

The transfer petitions are allowed in terms of the signed order.

Pending applications stand disposed of.

(MEENAKSHI KOHLI)
ASTT. REGISTRAR-cum-PS

(RANJANA SHAILEY)
COURT MASTER

[Signed order is placed on the file]