

2013 (0) AIJEL-HC 228973

GUJARAT HIGH COURT

Hon'ble Judges:G.B.Shah, J.

Renu Purshottam Mandovara W/o Dinesh Ramjas Shah Versus Chetan Aashram Enani

MISCELLANEOUS CIVIL APPLICATION (FOR TRANSFER) No. 2037 of 2012 ; *J.Date :-
JANUARY 24, 2013

- CODE OF CIVIL PROCEDURE, 1908 Section - 24

Cited in :

1. (Referred To) :- Shraddha W/o Kumar Kamalbabu Bhatt And D/o Dipakbhai Mugatbhia Joshi Vs. Kumar Kamalbabu Bhatt, 2015 JX(Guj) 793 : 2015 AIJEL_HC 233147

Equivalent Citation(s):

2013 JX(Guj) 4 : 2013 AIJEL_HC 228973

JUDGMENT :-

1 This application is filed by the applicant under Section 24 of the Code of Civil Procedure, 1908 seeking transfer of Civil Misc. Application No. 62 of 2011, filed by the respondent herein (Ex-Husband) against the applicant herein, for custody of the child (Sarthak) under Section 25 of the Guardian and Wards Act before the Family Court to the Family Court at Vadodara.

2 Mr. Viral M. Pandya, learned advocate for the applicant, submitted that marriage of the applicant and respondent was solemnized on 18.04.2006. It is alleged by the applicant that during the pregnancy, she was constrained to leave her matrimonial home by the respondent-husband i.e. in the year 2009 and therefrom, she resides at her parental home and there exists no relation between them. The applicant-wife delivered a child named Sarthak who is also leaving with the applicant wife-mother. Eventually, the applicant and the respondent herein had preferred an application for Divorce by mutual consent and decree of Divorce was came to be passed on 21.10.2010. It is further alleged by the applicant that in the month of May-2011, she engaged with one Dineshkumar Ramjas Shah and thereafter, only the respondent herein started harassing the applicant and her family members and also threaten her not to marry other person. Consequently, the applicant was constrained to file a criminal complaint against the

respondent. It is alleged by the applicant that respondent-husband has filed the application in question for custody of child with a view to harass the applicant. The learned advocate for the applicant has submitted that the son of the applicant is aged about 3 years studying in Stella Mary's School and Twinkle Totters Happy Pre School situated at Vadodara. He further submitted that in the circumstances, it would be difficult for her to attend the Court at Ahmedabad with a minor child, besides incurring expenses for the same. Last but not the least, learned advocate for the applicant submitted that the present application may be allowed and Civil Misc. Application No. 62 of 2011 came to be transferred to the Family Court at Vadodara.

3 I have heard learned advocate Mr. Aftabhusen Ansari appearing for the respondent-husband. Learned advocate for the respondent could not controvert the submissions made by the learned advocate for the applicant, by filing the affidavit in Reply. The learned Advocate for the Respondent has mainly submitted that the divorce decree was already passed and as there is no matrimonial dispute in question is existed and as, at no point of time they lived at Vadodara, the Court at Ahmeabad only has the Jurisdiction. The hardship to the applicant is one of the main ground for preferring the present application and so there appears no force in the submissions made by the learned advocate for the Respondent.

4 Having heard the learned advocate for the parties, having perused the papers on record and taking into consideration the averments made in the application which are supported by the affidavit of the applicant, it clearly transpires that in the given circumstances, it would be difficult for the applicant-wife to travel to Ahmedabad from Vadodara on and often for attending the aforesaid proceedings initiated by the respondent-husband herein under the provisions of the Guardian and Wards Act. In the opinion of this Court, ends of justice would be met, if the present application is allowed.

5 . In above view of the matter, present application is allowed. The Civil Misc. Application No. 62 of 2011, pending in the Family Court at Ahmedabad is ordered to be transferred to the Family Court at Vadodara. The Court concerned is further directed to send the Records and Proceedings of Civil Misc. Application No. 62 of 2011 to the Family Court at Vadodara forthwith following the due procedure for the same. Rule is made absolute to the aforesaid extent. No order as to costs.