



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
MISC. CIVIL APPLICATION NO.449 OF 2024**

Rishit Satish Kapadia ... Applicant
versus
Setu R. Shah @ Rishit Kapadia and Ors. ... Respondents

Mr. Shailesh S. Kharat with Mr. Onkar K. Chaudhari, for Applicant.
Mr. Shambhu Jha (through VC) with Mr. Afsar Ansari i/by Mr. Shambhu Jha,
for Respondent No.1.

CORAM: N.J.JAMADAR, J.

**CLOSED FOR ORDERS ON : 28 MARCH 2025
PRONOUNCED ON : 17 APRIL 2025**

ORDER :

1. This is an application for transfer of DV Case No.40 of 2018 from the Court of Metropolitan Magistrate, Girgaon, Mumbai to the Family Court at Bandra, Mumbai.
2. Respondent No.1 is the wife of the applicant. Respondent Nos.2 and 3 are the parents of the applicant. The marriage of the applicant was solemnized with the Respondent No.1 on 1 January 2018.
3. In the wake of the marital discord, Respondent No.1 has filed proceedings under the Protection of Women from Domestic Violence Act, 2005, being DV Case No.40 of 2018 against the Applicant and Respondent Nos.2 and 3 on 17 September 2018. Initially, Respondent No.1 had also filed a Petition for decree of nullity of marriage under Section 11 of the Hindu

Marriage Act, 1955. Respondent No.1, however, withdrew the said Petition. The applicant has, in turn, filed Marriage Petition being Marriage Petition No.A-3106 of 2022 before the Family Court for dissolution of marriage. Respondent No.1 had also lodged FIR being No.66 of 2023 against the applicant and Respondent Nos.2 and 3 for the offences punishable under Sections 354, 509, 323 and 504 of the Indian Penal Code. The said prosecution was quashed by the High Court by a judgment and order dated 1 December 2023. The applicant has, thus, preferred this application to transfer the proceedings under the Domestic Violence Act, to the Family Court at Bandra, for hearing and disposal along with the divorce Petition.

4. Respondent No.1 has resisted the application by filing an affidavit in reply. It is contended that the application has been filed with an ulterior motive to further harass the Respondent No.1. The applicant has not complied with the orders passed by the learned Magistrate in the said proceedings. Consequently, another proceedings for disobedience of the order passed by the learned Magistrate, being SS/139/2023, is filed before the learned Magistrate. Thus, apart from the proceedings under the DV Act i.e. DV Case No.40 of 2018, two other proceedings i.e. Criminal Case No.SS/139 of 2023 and Case No.389/PW/2022 are pending before the Court of Magistrate at Girgaon. Therefore, the transfer of DV proceedings No.40 of 2018 to the Family Court at Bandra, would not serve any purpose. On the

contrary, the Respondent No.1 would suffer prejudice.

5. I have heard Mr. Kharat, learned Counsel for the Applicant, and, Mr. Shambhu Jha, learned Counsel for Respondent No.1, at some length.

6. Mr. Kharat, learned Counsel for the Applicant, submitted that the trial of the proceedings under the DV Act along with the Marriage Petition would advance the cause of justice, as identical questions of fact and law may arise for determination in both the proceedings. It would avoid duplication of evidence. Since the parties are residing at Mumbai, Respondent No.1 would not suffer any inconvenience.

7. Mr. Kharat would further urge that other proceedings pending before the Court of Magistrate at Girgaon, are, in a sense, subsidiary. Therefore, that cannot be a ground to oppose the prayer for transfer of DV proceedings to the Family Court at Bandra.

8. Mr. Jha, learned Counsel for Respondent No.1, strenuously opposed the prayer for transfer. It was submitted that the applicant who has persistently disobeyed the orders of the Magistrate passed in DV Case No.40 of 2018 does not deserve any discretionary relief.

9. I have considered the submissions on behalf of the parties. On the aspect of the jurisdiction of the Family Court to try the proceedings under the DV Act, 2005 in view of the decisions of this Court in the cases of Santosh

Machindra Mulik V/s. Mohini Mithu Choudhari¹ and Vijay Suryakant Kakade V/s. Anushka Vijay Kakade and Ors.², on which reliance was placed by Mr. Kharat, the Court need not delve on the jurisdictional competence of the Family Court to entertain, try and decide the proceedings under the DV Act, 2005. In view of the provisions contained in Section 26 of the DV Act, 2005, the Family Court can decide the proceedings under the DV Act, 2005. However, it is the aspect of expediency of such transfer of DV Case to the Family Court, that warrants consideration.

10. Evidently, Respondent No.1 had filed proceedings under the DV Act, under 9 months of the marriage between the applicant and Respondent No.1. It is true, certain proceedings ensued between the parties, including a Petition for dissolution of marriage, being Petition A-3106 of 2022, which has been filed by the applicant in the year 2022. However, the fact remains that the DV proceedings is pending before the Court of Magistrate since the year 2018. The affidavit in reply filed on behalf of Respondent No.1 further indicates that certain protective orders were passed by the learned Magistrate in the said DV Case No.40 of 2018. Alleging that there was breach of the said protective order, Respondent No.1 has filed a complaint under Section 31 of the DV Act, 2005, being Case No.SS/139/2023. This factor also deserves to be taken into account. In the least, it implies that there are allegations of breach of the

1 MCA No.64 of 2019 dated 15 Nov. 2019

2 MCA No.498 of 2022 dated 2 Feb. 2023

protective orders passed by the Magistrate in the said DV proceedings.

11. In the aforesaid view of the matter, transfer of DV Case No.40 of 2018, at this stage, to the Family Court at Bandra, would further derail the hearing and disposal of the said DV proceedings. The legislative object behind prescribing time frame for concluding DV proceedings and providing mechanism for enforcement of the orders passed under DV Act, 2005, at the pain of prosecution, would be defeated if the proceedings under the DV Act, 2005, are not expeditiously concluded. Moreover, since the complaint arising out of the allegation of breach of the protective order has been filed before the learned Magistrate, the transfer of DV proceedings to the Family Court at Bandra, at this stage, may be counter-productive.

12. In a situation of this nature, this Court is of the view that the Magistrate is better equipped to deal with the proceedings under DV Act, 2005. It cannot be said that the issues which arise for determination in a Petition for dissolution of marriage and proceedings under the DV Act, 2005, would be identical, though some overlapping is inevitable.

13. For the foregoing reasons, I am not inclined to transfer DV Proceedings from the learned Magistrate, Girgaon, to the learned Judge, Family Court at Bandra.

14. Hence, the following order :

ORDER

- (i) The Misc. Civil Application stands rejected.
- (ii) No costs.

(N.J.JAMADAR, J.)