

IN THE HIGH COURT OF JUDICATURE OF BOMBAY,  
BENCH AT AURANGABAD

**MISC. CIVIL APPLICATION NO. 146 OF 2014**

Sau. Sarika Sachin Jadhav ... Applicant

Versus

Sachin Bajirao Jadhav ... Respondent

.....  
Mr. N.S. Jaju, Advocate for Applicant  
Mr. N.S. Markad, Advocate holding for  
Mr. C.K. Shinde, Advocate for respondent.  
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**CORAM : RAVINDRA V. GHUGE, J.**

**DATED : 13<sup>th</sup> APRIL, 2015**

PER COURT :

1. The applicant and the respondent are a married couple. The marriage was solemnized on 27-11-2011. A girl child was born on 30-11-2012 out of the wed-lock.

2. There are allegations made by the two sides against each other. Hindu Marriage Petition No. 312/2012 has been preferred by the respondent/ husband before the 3<sup>rd</sup> Civil Judge, Senior Division, Aurangabad seeking Restitution of Conjugal Rights under Section 9 of the Hindu Marriage Act.

3. The applicant/ wife has filed this application under Section 24 of the CPC for seeking transfer of H.M.P. No. 312 of 2014 pending before the 3<sup>rd</sup> Civil Judge, Senior Division, Aurangabad to the Family Court at Pune.

4. Shri Jaju, learned Advocate for the applicant submits that the applicant has to travel from Pune to Aurangabad for attending the dates of hearing in the said proceedings at Aurangabad. Being a lady, a family member has to accompany her since she is not in a position to travel alone. She is now a mother of a child who is about two and half years old. The girl child cannot be left alone at home inasmuch as she cannot be made to undertake the journey along with the applicant from Pune to Aurangabad.

5. Shri Jaju, has placed reliance upon the judgment of the Apex Court in the case of *Sumita Singh V. Kumar Sanjay and another*, AIR 2002 SC 396. He relies upon paragraph Nos. 1 to 4 of the said case which read as under :-

*1. This is a transfer petition by the wife. She seeks the transfer of matrimonial proceedings filed by the husband against her in Ara, Bhojpur to Delhi. It is her case that she is now living and working in Delhi and that she would be unable to travel up and down from Delhi to Ara, a distance of about 1100 Kilometers from Delhi, to defend the matrimonial proceedings. She also states that she has no one with whom she can stay in Ara because her parents are residents of Gurgaon.*

2. *Learned counsel for the husband states that the wife is an educated woman who is doing very well and can, therefore, travel to Ara while the husband is unemployed.*

3. *It is the husband's suit against the wife. It is the wife's convenience that, therefore, must be looked at. The circumstances indicated above are sufficient to make the transfer petition absolute.*

4. *Accordingly, Matrimonial Case No. 30 of 2000 pending before the VIth Additional District and Sessions Judge, Ara, Bhojpur, Bihar shall stand transferred to the District Judge, Delhi, who shall hear it himself or assign it for hearing to an appropriate forum.*

6. This Court has dealt with a similar case in the matter of *Vandana W/o Devidas Salve Vs. Devidas S/o Baban Salve, 2013 (12) LJSOFT 360*. The observations of this Court set out in paragraph Nos. 10 & 11 which read as under :-

10. *Another argument of the learned counsel appearing for the respondent that, in view of the provisions of Section 24 of the Hindu Marriage Act, it is only the Court at Pune, which can adjudicate the petition filed by the respondent is concerned, the Supreme Court in the case of Sumita Singh Vs. Kumar Sanjay reported in AIR 2002 SC 396 has taken a view that in a proceedings instituted by the husband, wife's convenience should be looked at.*

11. *In the facts of present case, it is not disputed that the applicant is residing with her parents at Sidhanath Wadgaon, Lasur road, Tq. & Dist. Aurangabad. The distance between Sidhanth Wadgaon to Pune is not less than 200 Kms. Apart from the inconvenience, the applicant has also stated that she has no independent financial source so as to meet the expenses for travel from Sidhanath Wadgaon to Pune and from Pune to Sidhanath Wadgaon. Therefore, in the light of the discussion made above, the present Misc. Application deserves to be allowed.*

7. The observations of this Court in the case of *Sau. Kalpna w/o Pankaj Rozatkar Vs. Pankaj s/o Supadu Rozatkar, 2014 (1)*

Mh.L.J. 32, are set out in paragraph Nos. 2 to 6 which read as under :-

2. *This application is filed for transfer of the proceedings of Hindu Marriage petition No. 161 of 2007 pending before the Court of Civil Judge, Senior Division, Kalyan to the Court of the Civil Judge, Senior Division, Jalgaon. Since the facts of the case are stated by the applicant in the application, as and when it is necessary this Court will refer the said facts, however, it is not necessary for the purpose of deciding this application to reproduce the facts.*

3. *The learned Counsel appearing for the applicant submits that, the distance between Jalgaon to Kalyan is more than 400 Kms. and therefore, it is inconvenient for the applicant-wife to travel from Jalgaon to Kalyan to attend the proceedings instituted by the respondent-husband. It is submitted that, Special Civil Suit No. 208 of 2011 is filed by the respondent-husband before the Civil Court at Jalgaon for compensation against the applicant, which is pending. It is submitted that, other two proceedings instituted by the application, (1) under Protection of Women from Domestic Violence Act and (2) H.M.P. No. 107 of 2011 for Restitution of Conjugal Rights, are pending before the Court at Jalgaon. In addition to this, it is submitted that, four years son is residing with the applicant. Therefore, the learned Counsel appearing for the applicant submits that, Civil Revision Application deserves to be allowed.*

4. *On the other hand, the learned Counsel appearing for the respondent submits that, , the respondent is working as Teacher and therefore, it is difficult for him to travel from Kalyan to Jalgaon. It is submitted that, applicant-wife has instituted criminal complaint against the respondent and his family members invoking provisions of Section 498-A of the Indian Penal Code.*

5. *I have heard the learned Counsel appearing for the parties. There is no dispute that, distance between Kalyan to Jalgaon is more than 400 Kms. Apart from the distance, four years child is with the applicant. The applicant has to look after that child and therefore, if the balance of convenience is weighed, certainly it lies in favour of the applicant. Apart from what is observed herein above, other three proceedings are pending at Jalgaon, out of which, one at the instance of the respondent being Special Civil Suit No. 208 of 2011 for compensation against the applicant.*

6. *In that view of the matter and in view of the authoritative pronouncement of the Supreme Court in the case of Sumita Singh Vs. Kumar Sanjay reported in (2001) 10 S.C.C. 41, wherein the Supreme Court held that, in a proceedings instituted by the husband, convenience of the wife should be looked at, this Misc. Civil Application deserves to be allowed. Hence, the following order;-*

(1) *The Misc. Civil Application is allowed to the extent of transfer of Hindu Marriage Petition No. 161 of 2007 pending in the Court of Civil Judge, Senior Division, Kalyan to the Court of Civil Judge, Senior Division, Jalgaon.*

(2) *The concerned Court at Kalyan to take steps to transfer the said proceedings within a one week from receipt of the copy of this order.*

(3) *On transfer of the said proceedings, the Civil Judge, Senior Division, Jalgaon should make attempt to dispose of the same, as expeditiously as possible, however, within one year from today.*

(4) *The concerned Court should not grant unnecessary adjournments to the parties unless there exist extraordinary reason for the same.*

(5) *It is made clear that, so far proceedings which are pending before the Judicial Magistrate, First Class, Kalyan, this Court has not passed any order and it is left open to the applicant to take appropriate proceedings before the appropriate forum if the applicant is advised.*

(6) *Misc. Civil Application is allowed to the above extent and same stands disposed of. Rule made absolute on above terms.*

8. Shri Jaju, therefore, submits that it is trite law that the convenience of the wife in such matrimonial proceedings has to be seen. He, therefore, prays for transfer of H.M.P.No. 312 of 2014 to the Family Court at Pune.

9. Shri Markad, learned Advocate has strenuously opposed this application. He submits that the distance of about 225 Kms between Pune and Aurangabad is not a long distance. The applicant can surely travel to Aurangabad and participate in the hearing. She need not bring her child along with her. A journey from Pune to Aurangabad cannot be said to be unsafe to the applicant-lady. He further submits that he is willing to settle differences with the applicant and if need be the matter could be referred to the mediator for the said purpose.

10. In the light of the submissions of the learned Advocates, I find that it cannot be said that the applicant can conveniently travel from Pune to Aurangabad on each date of hearing in the proceedings at Aurangabad. Her daughter is of an extremely tender age and it would be difficult to keep the daughter at home when she visits Aurangabad. Similarly, it would be inconvenient for the said child of two and half years age to travel with her mother on each occasion. The law as is laid down in the above reports, is indicative that the convenience of the wife has to be given a preference.

11. In the light of the above, this application is allowed. H.M.P. No. 312/2014 pending before the Civil Judge Senior Division,

Aurangabad shall stand transferred to the Family Court at Pune. The parties are at liberty to make an application for referring the matter to a mediator so as to explore the possibility of resolving the dispute between themselves.

( **RAVINDRA V. GHUGE, J.**  )