

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION.**

MISC. CIVIL APPLICATION NO. 50 OF 2015

Vaishali Shalikram Dhaykar	... Applicant.
V/s.	
Shalikram Dadabhau Dhaykar	... Respondent

Mr. Sachin Chandan for the applicant.
None for the respondent.

**CORAM : K. K. TATED, J.
DATED : 21/08/2015.**

PC.:

. Heard learned Counsel for the applicant.

2 Though the Respondent is duly served, no one appeared on behalf of him when the matter called out.

3 This Court by order dated 24.03.2015 issued notice to the Respondent indicating that subject to time constraint and the convenience of the court, application will be disposed off finally at the stage of admission. It is also stated in the said order that notice was issued to further indicate that despite of service if the respondent fails to appear, the Court will proceed to decide the application on its own merits. Hence, the matter is taken for final hearing.

4 This application is preferred by wife under Section 24 of C.P.C. for transfer of H.M.P No. 120 of 2014 filed by the respondent husband under Section 13(1A) of Hindu Marriage Act in the Court of the Civil

Judge, Senior Division, Jalna.

5 The learned Counsel for the applicant submits that the applicant is residing at Ulhasnagar since prior to and after her marriage and at the filing of the present application. He further submits that if the applicant is required to attend the Jalna Court from Ulhasnagar, the distance is more than 500 kms. He submits that the applicant at present is residing with her parents. He submits that the financial position of her parents is not sound and that they cannot afford to spent more than Rs.2,000/- to Rs.3000/- per trip to attend the Petition filed by the respondent husband at Jalna.

6 The learned Counsel for the applicant submits that the applicant filed Criminal complaint under Section 498(A), 406 read with Section 34 of I.P.C. against the respondent with Vithalwadi Police Station at Ulhasnagar and same is pending before the J.M.F.C. at Ulhasnagar. He submits that the respondent is attending the said criminal matter.

7 The learned Counsel for the applicant submits that this Hon'ble Court be pleased to transfer the Petition bearing H.M.P. No. 120 of 2014 filed by the respondent husband at Jalna to the Civil Judge, Senior Division, Kalyan. He submits that if the application is not allowed, the applicant has to suffer financially as well as mentally.

8 I heard the learned Counsel for the applicant at length. In the application under Section 24 of the C.P.C., the balance of convenience is of prime consideration for transfer of the matter from one place to another. The expression "balance of convenience" has inspired

profound legal thought and has acquired the gloss of many judicial interpretations. It is a question of fact in each case. Balance of convenience is neither the convenience of the plaintiff alone nor of the defendant alone but it is the balance of convenience of both. In determining the balance of convenience for the trial of a suit the court has to take into consideration (1) the convenience or inconvenience of the plaintiff and the right of the plaintiff to choose his own forum; (2) the convenience or inconvenience of the defendant; (3) the convenience or inconvenience of the witnesses required for a proper trial of the suit; (4) the convenience or inconvenience of a particular place of trial having regard to the nature of the evidence on the main points involved in the suit and also having regard to the doctrine of “*forum convenience*”, and (5) the nature of issues in the suit.

9 It is to be noted that the Apex Court in the matters of ***Dipti Bhandari V/s. Nitin Bhandari reported in 2012(1) SCC 725, Pratibha Khemkar V/s. Sanjaykumar Khemkar reported in 2005 (2) LJ soft SC 19*** and our High Court decision in the matter of ***Mrs. Jayashree Patil V/s. Ramesh Patil reported in 2013 (3) All Mh. R. 578*** held that the convenience of the lady/wife required to consider for the transfer of case. The case in hand is required to be considered on above principal.

10 In the present proceeding, the applicant is residing at Ulhasnagar in Thane District. The distance between Ulhasnagar and Jalna is more than 500 kms. The applicant is a household wife. The financial position of her parent is not so good that they can afford to spent more than Rs.3000/- on each date of hearing of matter. Not only that, to

attend the matter at Jalana, applicant has to travel overnight.

11 The Apex Court in the matter of Dipti Bhandari (supra), Pratibha Khemkar (Supra) held that the convenience of the lady has to be kept in mind at the time of transfer of the matter from one court to other court. In similar way, our High Court in the matter of Jayshree Patil (Supra) held that considering the convenience of the wife, proceeding to be transferred.

12 Considering the submissions made by learned counsel for the applicant, averments made in application and law laid down by the Apex Court as well as our High court as stated herein above, I am satisfied that applicant has made out the case for allowing the misc. civil application.

13 Hence, the following order is passed:

A) Misc. Civil Application is allowed in terms of prayer clause (a), which reads thus:

“a) To transfer the proceedings bearing H.M.P No. 120 of 2014 from the Hon'ble Civil Judge, Senior Division, Jalna, Jalna to Honourable Court of Civil Judge, Senior Division at Kalyan.”

B) Considering the facts and circumstances of the present case, the hearing of Petitioner bearing H. M.P No. 120 of 2014 is expedited.

(K.K.TATED, J.)