

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

MISC. CIVIL APPLICATION (ST.) NO. 20631 OF 2005

Praveena Amit Kumar	... Applicant
V/s.	
Amit Kamal Kumar	... Respondent

Mr. Saurabh Oka for the applicant.
Mr. G. R. Hegde for the respondent.

**CORAM : K. K. TATED, J.
DATED : 12/10/2015.**

PC.:

. Heard learned Counsel for the parties.

2 This application is filed by wife under Section 24 of Code of Civil Procedure, 1908 for transfer of divorce petition bearing M.J. Petition No. A-1561 of 2015 filed by the respondent husband under Section 13(1)(ia) of Hindu Marriage Act, 1955 in the Family Court at Bandra, Mumbai to the Family Court at Thane.

3 The learned Counsel for the applicant submits that applicant has to maintain her two minor daughters, one eight years old and other is three years old. He submits that though the applicant is working but her office is at Thane only, so that in an emergency she can move to her flat.

4 The learned Counsel for the applicant submits that it is very

difficult for her to attend each and every date of divorce petition filed by the respondent husband at Bandra. He submits that in the cause title of divorce petition, the respondent husband specifically stated that at present he is residing at Chennai. He further submits that even the respondent husband does not have any flat or residential accommodation at Mumbai. He submits that respondent's/husband's mother and sister staying at Thane i.e. at Vraj Green Valley, Kolshet Road, Thane (W).

5 The learned Counsel for the applicant submits that considering these facts and circumstances, this Hon'ble Court be pleased to transfer the divorce petition filed by the husband at Family Court at Bandra to the Family Court at Thane.

6 On the other hand, the learned Counsel for the respondent husband vehemently opposed the present Misc. Civil Application. He submits that applicant has not shown any cause of action to transfer the matter from Family Court at Bandra, Mumbai to Family Court at Thane. He submits that applicant being a working woman has to attend the office for whole day and applicant has whole day servant to look after both the minor children. Therefore, the reasons given by the appellant in the application for transfer of matter from one place to other place cannot be considered in the present matter.

7 The learned Counsel for the respondent submits that the Apex Court in the matter of *Smita Singh V/s. Kumar Sanjay & Anr. Reported in (2001) 10 Supreme Court Cases 41*, rejected the

application filed by wife to transfer the matter from one place to other place on the ground of distance. He submits that in that matter the distance was 1100 kms. Whereas, in the matter in hand, the distance is not more than 20 kms. Therefore, the application filed by the applicant under Section 24 of Code of Civil Procedure, 1908 required to be dismissed with cost.

8 I heard both the sides at length. It is to be noted that in the present proceeding applicant has to take care of two minor children, one is of 8 years and other is of 3 years.

9 The Apex Court in the matter of *Pratibha Khema v/s. Sanjay Kumar Khema*, reported in 2005(2) L. J. Soft SC 19 and in the matter of *Soma Choudhary V/s. Gourab Choudhary*, reported in 2004 (13) SCC 462 held that convenience of the lady is required to be considered at the time of deciding the application under Section 24 of Code of Civil Procedure, 1908. The authority cited by the respondent husband is not applicable in the facts and circumstance of the present case. Even otherwise, in that case also the Apex Court specifically stated that Court has to pass the order in application under Section 24 of Code of Civil Procedure, 1908 on the facts and circumstances of the case. It is to be noted that the case in hand is altogether different from the facts and circumstances of that case. In the present case, applicant has to maintain two minor children.

10 Considering the facts and circumstances of the present case and law laid down by the Apex Court, I am of the opinion that applicant has

made out case for allowing Civil Application.

11 Hence, following order.

a) Office of the Family Court at Bandra, Mumbai is directed to transfer the divorce petition bearing M.J. Petition No. A-1561 of 2015 filed by the respondent husband under Section 13(1)(ib) of Hindu Marriage Act, 1955 to the Family Court at Thane for hearing and final disposal on its own merits.

b) Hearing of M. J. Petition No. A-1561 of 2015 filed by the respondent husband for divorce is expedited.

c) This Court expects that Trial Court should decide the said divorce petition as early as possible, but in any case within one year from the receipt of papers and proceedings from the Family Court, Bandra, Mumbai

d) Misc. Civil Application stands disposed of accordingly.

(K.K.TATED, J.)