

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

MISC. CIVIL APPLICATION NO. 32 OF 2018

Mangal Vishal Narote	...	Applicant
V/s.		
Vishal Sadashivrao Narote	...	Respondent

- Mr.Suyas Gadre a/w. Mr.Chetan Mhatre i/b. Utangale & Co. for the Applicant.
- Mr.Rajan S. Pawar for the Respondent.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 16th JULY, 2018.

P.C. :

1] Heard learned counsel for the Applicant and learned counsel for the Respondent.

2] This Application is filed under Section 24 of the Code of Civil Procedure Code (*for short, "C.P.C."*) for transferring the matrimonial petition bearing H.M.P. No.261 of 2017 from the Court of Civil Judge, Senior Division, Yavatmal to the Court of Civil Judge, Senior Division, Thane.

3] Brief facts of the case are as under:

Applicant is the wife of the Respondent. She is doing her

Post Graduation study as “Master of Hospital Administration” in Mumbai and residing at her parents' place at Sanpada, Navi Mumbai. Respondent is a Medical Practitioner at Wardha and he is also working as 'Professor' there. Their marriage had taken place on 28/6/2012 at Hingoli, Maharashtra. Thereafter, they cohabited together for some time and then on account of domestic violence, as per the case of the Applicant, she was constrained to leave the house of the Respondent and is at present residing in the house of her parents at Navi Mumbai.

4] Respondent had earlier filed the petition for 'Restitution of conjugal Rights' in the Court at Yavatmal. At that time also, the Applicant had filed the Misc. Civil Application No.266 of 2015 for transferring the said proceedings to the Court at Navi Mumbai. However, subsequently the Respondent has withdrawn the said petition H.M.P. No.203 of 2015. Therefore, the Misc. Civil Application No.266 of 2015 filed by the Applicant became infructuous and it was disposed off by this Court on 24/11/2016.

5] Subsequently thereto, the Respondent has filed this H.M.P. No.261 of 2017 for 'dissolution of marriage'. Hence, the Applicant is again constrained to approach this Court for transfer of the said petition, which is filed in the Court of Civil Judge, Senior Division, Yavatmal to the Court of Civil Judge, Senior Division, Thane. The

Applicant has also meanwhile filed Criminal Case No.167 of 2017 under the provisions of the Domestic Violence Act against the Respondent, which is pending in the Court of Judicial Magistrate First Class at Vashi, Navi Mumbai.

6] This Application is resisted by the Respondent contending *inter-alia* that he being the medical practitioner at Yavatmal, his practice will suffer, even his patients will also suffer on account of his absence, if he is required to attend the Court at Thane. Secondly, it is submitted that his parents are old and they are suffering from various ailments. Therefore, if he is called upon to attend the Court at Thane for the petition for divorce and again the Court at Navi Mumbai for proceedings under the Domestic Violence Act, then he will suffer greater hardship. Therefore, according to the Respondent, this Application cannot be allowed; especially when the Respondent is also ready to bear the travelling expenses of the Applicant and also travelling expenses of the escort.

7] In support of his submission learned counsel for the Respondent has placed reliance on the judgment of the Hon'ble Apex Court in the case of *Kalpna Deviprakash Thakar V/s. Dr.Deviprakash Thakar*¹ wherein more or less the facts were similar, as the

1 (1996) 11 SCC 96

Respondent-husband was medical practitioner at Mumbai; whereas the wife was residing at Palanpur, Gujarat. Petitioner-wife had applied for transfer of the proceeding from Mumbai to Palanpur. Respondent-husband had resisted the same with the similar contention that his old and ailing mother was living with him at Mumbai and she needed the frequent medical check-up and constant care. It was also pleaded that the witnesses in the case are principally from Mumbai and the Petitioner-wife has some near relations in Mumbai. In this backdrop, it was held by the Hon'ble Apex Court that as Palanpur is well connected by train with Mumbai, the petitioner-wife would not have to face much difficulty in undertaking the journey, when the Respondent-husband was ready to bear the expenses of escort also. The petition for transfer of the proceedings was therefore dismissed.

8] However, the facts of the present case differ only in one aspect because, here there is nothing on record to show that the Applicant-wife is having any of her relative at Yavatmal, where the proceedings are filed. Moreover, the distance between Navi Mumbai and Yavatmal is about 750 km and there is no direct train, so also the connectivity is not that good. She may face difficulty in travelling alone all the way from Navi Mumbai to Yavatmal; especially as according to her, her parents are unable to accompany her on each

and every date, even if the Respondent is ready to bear the expenses. It is also pertinent to note that she is doing the Post Graduation Course at Navi Mumbai and therefore, her attendance for the said Course is also essential.

9] In addition to that, as the proceedings under the Domestic Violence Act are filed in the Court at Vashi, Navi Mumbai, the Respondent is otherwise also required to attend the Court at Vashi, Navi Mumbai and hence, the inconvenience and difficulties which the Respondent may suffer can be reduced, if both the proceedings are transferred to one and the same Court, so that one and the same date can be given in the said proceedings.

10] In the application, it may be true that there is no prayer for transferring the proceedings of Domestic Violence Act from the Court of Judicial Magistrate, First Class, Vashi, Navi Mumbai to the Court of Civil Judge, Senior Division, Thane; but considering the joint request made at bar by learned counsels for both the parties, the inconvenience or the difficulty, which the Respondent may suffer for attending two different proceedings at two different forums at different dates, can be reduced, if both the proceedings are brought in one Court. Needless to state that the difficulty which the Applicant being a lady may face while attending the Court at Yavatmal will be far

more, than the difficulty which the Respondent may face in coming to the Court at Thane. The inconvenience of the wife or her difficulty is recognized as the ground for transfer of the proceedings in various decisions of the Hon'ble Apex Court, including the decisions in the case of *Sumita Singh V/s. Kumar Sanjay*², *Krutika Ritesh Arya Vs. Ritesh Laxman Arya*³ etc.

11] Hence, the Misc. Civil Application is allowed and following order is passed.

- (a) *H.M.P. No.261 of 2017 pending on the file of the Court of Civil Judge, Senior Division, Yavatmal is transferred to the Court of Civil Judge, Senior Division, Thane.*
- (b) *At the same time, on the joint request of learned counsels for the parties, D.V. Proceedings bearing No.167 of 2017 pending in the Judicial Magistrate, First Class Court at Vashi is also transferred to the Court of Civil Judge, Senior Division, Thane. Both these proceedings be tried by the same Court.*
- (c) *Both the parties are directed to appear before the Court of Civil Judge, Senior Division, Thane on 21st August, 2018.*

² 2001 (10) SCC 41

³ Misc. Civil Application No.59 of 2015 dated 02/02/2016

- (d) *Registry to inform the concerned Courts and do the needful.*
- (e) *Parties to act on the basis of the authenticated copy of this order.*

[DR.SHALINI PHANSALKAR-JOSHI, J.]