

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

MISC. CIVIL APPLICATION NO. 26 OF 2018

Pankaja Suhas Badiger	...	Applicant
V/s.		
Suhas Ramchandra Badiger	...	Respondent

- Mr.Dhananjayrao D. Rananaware for the Applicant.
- Mr.Vinod Sangvikar a/w. Mr.Yogesh Morbale 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 preferred under Section 24 of the Code of Civil Procedure for seeking transfer of H.M.P. No.112 of 2013 pending in the Court of Civil Judge, Senior Division, Ichalkaranji, District Kolhapur to the Court of Civil Judge, Senior Division, Satara.

3] Brief facts of the case are as under :-

Applicant is the wife of the Respondent. She is having two minor children of the age of 6 and 10 years respectively. She is

working as 'Primary Teacher' in the Satara Zilla Parishad School at Apshinge, District Satara. The H.M.P. No.112 of 2013 is filed by the Respondent against her for 'dissolution of marriage' in the Court at Civil Judge, Senior District, Kolhapur. Hence, she is finding it very difficult to attend the said proceedings. Earlier also she and her Advocate were threatened and assaulted by the Respondent and his family members. Therefore, she was constrained to file the application for transfer of the proceedings bearing Misc. Civil Application No.16 of 2017 in this Court. At that time, she was working at Kolhapur and the proceedings were filed at Ichalkaranji but because of the threat and apprehension of danger to her safety, she was constrained to file the application of transfer, even though the distance between the two places was hardly 30 kms. However, during pendency of that application she is transferred to Apshinge, District Satara and therefore, she has withdrawn that application and filed this fresh application, as there is distance of about 150 kms between the place of her residence and the Court at Ichalkaranji, Kolhapur and therefore, she is finding it difficult and inconvenient to attend the Court at Ichalkaranji.

4] It is submitted that she has filed one Criminal Case viz. Regular Criminal Case No.33 of 2014 against the Respondent under

Section 498A and 320 of the Indian Penal Code, which is also pending in the Court at Ichalkaranji, Kolhapur. However, it is submitted that, it being a State case and she being a complainant/witness in that case, she will have to attend that case only once. However, in proceedings of H.M.P. No.112 of 2013, she will have to travel on each and every date from Apshinge to Ichalkaranji to effectively prosecute the said petition and on the count of having the responsibility of the children, she is finding it difficult to do so.

5] This application is resisted by the Respondent contending *inter-alia* that no sufficient cause is made out for transfer of the proceedings. It is submitted that, if the Applicant can attend the Court at Ichalkaranji for criminal proceedings, then there is no difficulty for her to attend the Court at Ichalkaranji for this civil proceedings also. According to learned counsel for the Respondent, therefore, no case is made out for the transfer of the petition.

6] To support the case of the Respondent, learned counsel for the Respondent has relied upon the judgment of the Hon'ble Apex Court in the case of *Anindita Das V/s. Srijit Das*¹ wherein the similar request was made by the Applicant-wife, who was having the responsibility of the child of 6 years, for transfer of the proceedings,

¹ (2006) 9 SCC 197

from the Court at Delhi was rejected. However, the facts of the said case show that in that case the grand parents of the children were available to look after the child and secondly, it was also brought on record that the Applicant-wife was having her relatives at Delhi. In that backdrop her request for transfer of the petition was rejected.

7] Here, in the case, no such evidence is produced to show that the Applicant is having any member of her family or parents to look after the children. Moreover, she is also working as a 'Primary Teacher', and in such situation, calling upon her to travel each and every date to the Court at Ichalkaranji, Kolhapur from Apshinge, Satara, is going to cause her more inconvenience and hardship. It will also affect her right to defend the proceedings effectively and hence, this is a fit case where her application needs to be allowed.

8] At this stage, it is pointed out that the Respondent has also filed application for 'custody of the children' bearing Civil M.A. No.34 of 2017, which is also pending in the Court of District Judge at Ichalkaranji. Considering the age of the children and the fact that the Applicant is unable to attend and prosecute the proceedings effectively, on the request of learned counsel for the Applicant, the said proceedings is also transferred to the Court of District Judge at Satara.

9] Therefore, this Misc. Civil Application is allowed and following order is passed.

- (a) H.M.P. No.112 of 2013 pending in the Court of Civil Judge, Senior Division, Ichalkaranji, District Kolhapur is transferred to the Court of Civil Judge, Senior Division, Satara.*
- (b) Applicant is however directed to attend the Court regularly and not to prolong the proceedings in any way.*
- (c) As the petition is of the year 2013, the trial Court to expedite the hearing.*
- (d) Civil M.A. No.34 of 2017 pending in the Court of District Judge at Ichalkaranji is also transferred to the Court of District Judge at Satara.*
- (e) Registry to inform the concerned Courts and do the needful accordingly.*

[DR.SHALINI PHANSALKAR-JOSHI, J.]