

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

MISC. CIVIL APPLICATION NO. 103 OF 2019

Yogita Yogesh Mohite

..... Applicant.

Vs.

Yogesh Jagannath Mohite

..... Respondent

.....
Mr. Ajit a/w Mahendra S. For the Applicant.
Mr. Ajinkya Bafna for the Respondent.
.....

**CORAM : K.K.TATED, J.
DATED : JULY 17, 2019**

P.C.

1 Heard Learned Counsel for the parties.

2. By this Application under Section 24 of the Civil Procedure Code, the Applicant wife is seeking transfer of Hindu Marriage Petition No. 02 of 2019 filed by the husband for divorce under Section 13(1) (ia) (ib) of the Hindu Marriage Act, 1955 before the Civil Judge, Senior Division Nandurbar to the Civil Judge, Senior Division Malegaon for hearing and final disposal on its own merits.

3. The Learned Counsel for the Applicant submits that the Applicant wife initially filed the Petition under Section 9 of the Hindu Marriage Act, 1955 in the month of March 2018 before the Civil Judge, Senior Division, Malegaon bearing Petition No. 181 of 2018 same is pending for hearing and final disposal on its

own merits. He submits that the Applicant also filed an Application under Section 125 of the Criminal Procedure Code on 27th June, 2017 before the Learned Judicial Magistrate, Malegaon claiming the maintenance @ Rs. 10,000/- per month. He submits that the Applicant wife also filed Criminal Case No. 830 of 2017 under Section 12, 17, 18, 19, 20, 22 and 23 of the Protection of Women from Domestic Violence Act, 2005 before the Learned District Magistrate, Malegaon on 4th July, 2017 and the same is also pending for hearing and final disposal on its own merits.

4. The Learned Counsel for the Applicant submits that thereafter, the Respondent husband filed Hindu Marriage Petition No. 2 of 2019 under Section 13(1) (ia)(ib) of the Hindu Marriage Act for divorce before the Civil Judge, Senior Division, Nandurbar. He submits that the subsequent Petition filed by the Respondent husband is required to be transferred to Malegaon Court for hearing and final disposal on its own merits along with the Petition filed by the Applicant under Section 9 of the Hindu Marriage Act. He submits that the journey from Malegaon to Nandurbar is of 3.30 hours i.e. near about 180 km . He submits that being a lady it is very difficult for her to attend matter at Nandurbar Court on each date. Therefore, in the interest of justice this Hon'ble Court be pleased to transfer the Petition filed by the Respondent husband at Nandurbar to the Court at Malegaon for hearing and final disposal at its own merits.

5. On the other hand, the Learned Counsel for the Respondent vehemently opposed the present application. He submits that the evidence is already completed in a petition filed by the Applicant under Section 9 of the Hindu Marriage Act. Whereas, in a Petition filed by the Respondent husband under Section 13 is not started. Therefore, there is no question of hearing both the Petitions by the same Court. He further submits that because of convenience of the wife matter cannot be transferred from one place to another place. In support of this contention he relied upon the Judgment of this Court *in the matter of Rekha Vs. Shivaji Bhimrao Sapate reported in MANU/MH/0376/2011*. He relied upon para 5 of this Judgment which reads thus:

“Para.5. Section 24 of the Code of Civil Procedure confers a discretionary power upon this Court to transfer the proceedings pending in one subordinate Court to another subordinate Court. It has to be exercised keeping in view the facts and circumstances of each case. The same cannot be exercised ipse dixit. The transfer of proceedings, which are filed in the court of competent jurisdiction, defeats the right of dominus litis to choose the forum. While deciding the application, the Court has to balance the convenience by taking into consideration relevant facts and circumstances and to see that the greater hardship is not caused by transfer of proceedings. Mere convenience of the parties or of any one of them may not be enough for exercise of power, but it must also be shown that the forum chosen by the other side will result in denial of justice. The choice of forum should not be to cause inconvenience to the adversary with a view to deprive that party of a fair trial. The power is to be exercised in interest of justice. The cases of transfer of matrimonial proceedings stand on a little different footing in view of the special provision for transfer of petition under section 21A of the Hindu Marriage Act, 1955. There also, the payment of to and fro expenses for travel for attending the matter by the wife is one of the important considerations for refusal to grant transfer [See:- Kalpana

Deviprakash Thakar (Smt.) V. Dr. Deviprakash Thakar MANU/SC/1812/1996 : (1996) 11 SCC 96] and Shiv Kumar Devendra Ojha v. Ramajor Shitla Prasad Ojha and Ors. MANU/SC/0238/1997 : AIR 1997 SC 1036].”

On the basis of this submissions, the Learned Counsel for the Respondent submits that there is no substance in the present application and the same is required to be dismissed with cost.

6. On hearing the both sides at length, it is to be noted in the present proceeding, the Applicant wife filed petition under Section 9 of the Hindu Marriage Act in the month of March, 2018, the Application under Section 125 of the Criminal Procedure Code before the Malegaon Court on 24th June, 2017 and the complaint under the Protection of Women from Domestic Violence Act, 2005 at Malegaon on 4th July, 2017 and thereafter, the Respondent husband filed the Petition for divorce under Section 13 of the said Act on 2nd January 2019 before the Nandurbar Court. On these facts the Application filed by the Applicant is required to be allowed.

7. Apart from that, the Applicant has to travel for more than 3 hours from Malegaon to Nandurbar, because the distance is more than 180 km. Considering these facts, I am of the opinion that the Applicant has made out case for allowing this application .

A. The application is allowed in terms of prayer clause (b) which reads thus:

“b. That this Hon'ble Court be pleased to transfer the hearing of petition bearing HMP No. 02 of 2019 filed by the Respondent herein, pending on the file of the Ld. Civil Judge, Senior Division at Nandurbar to the file of Ld. Civil Judge Senior Division at malegaon, having similar jurisdiction to try and entertain the same.”

- B. The Civil Judge, Senior Division, Malegaon is directed to hear Hindu Marriage Petition 2 of 2019 filed by the Respondent No. 1 under Section 13 of Hindu Marriage Act along with the petition filed by the petitioner wife under Section 9 of the said act being Hindu Marriage Petition No. 181 of 2018.
- C. The Misc. Civil Application is disposed of accordingly.
- D. No order as to costs.

(K.K.TATED, J.)