

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

**MIS. CIVIL APPLICATION NO.265 OF 2018**

Mrs. Sweta Milind Hoble  
Nee Sweta Somnath Shirodkar  
Aged about: 30 years,  
Occu: House Wife;  
Presently R/at: C/o Somnath Shirodkar  
Room No.18, 2<sup>nd</sup> Floor, 71, V.K.Building,  
Forjet Hill, Opp: Bhatia Hospital,  
Mumbai 400 036 ... Applicant

Vs

Mr. Milind Anil Hoble  
Age about 36 years,  
Occ: Business,  
R/at: House No.345,  
Mandar Nivas,  
Vaddy-Merces, Tiswadi-Goa  
Mumbai 400 064 ... Respondent

WITH

**MIS. CIVIL APPLICATION (ST) NO.32454 OF 2018**

Mr. Milind Anil Hoble  
Age about 36 years,  
Occ: Business,  
R/at: House No.345,  
Mandar Nivas,  
Vaddy-Merces, Tiswadi-Goa  
Mumbai 400 064 ....Applicant.

Vs.

Mrs. Sweta Milind Hoble  
Nee Sweta Somnath Shirodkar  
Aged about: 30 years,  
Occu: House Wife;  
Presently R/at: C/o Somnath Shirodkar  
Room No.18, 2<sup>nd</sup> Floor, 71, V.K.Building,  
Forjet Hill, Opp: Bhatia Hospital,  
Mumbai 400 036

... Respondent

...

Mr. Manoj Pandit with Ms. Shraddha Bane for the Applicant and Respondent in MCA (ST) No.32454 of 2018.

Mrs. Seema Sarnaik with Mr. Ashutosh Gavnekar and Mr. Saurabh Butala I/by Mr. Harshad Ashok Sathe for Respondent and Applicant in MCA(ST) No.32454 of 2018.

**CORAM : SANDEEP K. SHINDE J.**

**RESERVED ON : 28<sup>th</sup> FEBRUARY, 2019**

**PRONOUNCED ON: 29<sup>th</sup> MARCH, 2019**

**JUDGMENT :**

Vide Miscellaneous Civil Application No.265 of 2018 filed under Section 24 of the Code of Civil Procedure, 1908 ('CPC') the applicant-wife is seeking transfer of the following proceedings pending in the Court of Ad-hoc Civil Judge, Senior Division and

Senior Civil Judge at Panjim, Goa to the Family Court at Bandra, Mumbai:

- (I) Civil Miscellaneous Application No.73 of 2017 filed by the respondent-husband;
- (II) Civil Miscellaneous Application No.77 of 2017/B filed by the applicant for maintenance;
- (III) Marriage Petition No.53 of 2018/B filed by the husband for dissolution of marriage.

2           Miscellaneous Civil Application (St) No.32454 of 2018 is filed by the husband under Section 24 of the Code of Civil Procedure, 1908 seeking transfer of Petition No. A-2053 of 2008 filed by his wife for dissolution of marriage, pending in the Family Court, Bandra, Mumbai to the Civil Judge, Senior Division, Panjim, Goa.

3           Thus, wife and husband both are seeking transfer of proceedings filed against each other from the Court at Panjim to the Family Court, Bandra and vice-versa. It may be stated that both are seeking dissolution of marriage; one under the provisions of Article 4(1)(4) of the Family Laws of Goa filed by the husband and another

under Section 13(1)(ia) of the Hindu Marriage Act, 1955 by the wife filed in the Family Court at Bandra, Mumbai.

4           Before dealing with the rival contentions raised by the learned counsel for the parties, let me place on record a few facts.

5           Applicant (wife) married respondent, then divorcee on 13<sup>th</sup> December, 2009 according to the Hindu vedic rites and rituals at Goa. At the time of marriage, the applicant was 21 years and the respondent 27 years old. They registered the marriage on 8<sup>th</sup> November, 2011 in the office of the Civil Registrar Service of Goa according to the laws prevailing in the State of Goa. After marriage, they were residing at Panajim. The applicant is housewife and husband is businessman. Out of this wed-lock, Master Shaunak was born on 29<sup>th</sup> July, 2011 and Shrishti on 1<sup>st</sup> December, 2014 who are presently in care and custody of the wife.

6           It is wife's case that she was recurringly subjected to mental and physical abuse for want of dowry by husband and her in-

laws. It is her case that children were man-handled by the respondent and his parents, to compel her to write suicide note. That apprehending threats to her life, she was rescued and placed in temporary shelter which her uncle had at Goa and the first information report was lodged on 12<sup>th</sup> July 2017 at North Goa against her husband, mother-in-law and father-in-law under Section 498A, 323, 506II read with Section 34 of the Indian Penal Code, 1860 and under Sections 3 and 4 of the Dowry Prohibition Act.

7           It is applicant's case that her father-in-law has been taking press conferences and giving press interviews to slander her image by making false allegations against her. She alleged that her father-in-law has made her life miserable by substantially influencing administration in Goa. That on 19<sup>th</sup> August, 2017, her husband filed the petition for the custody of his son and daughter being Civil Miscellaneous Application No.73 of 2017/B in the Court of Civil Judge, Senior Division, Panjim, Goa. The Hon'ble Court was pleased to grant access and visitation rights to the husband by order dated 27<sup>th</sup> August, 2017 and the matter is pending for consideration before

the Civil Judge, Senior Division at Panajim.

8           The applicant-wife has filed an application for maintenance, being Civil Miscellaneous Application No.77/2017/B in September, 2017 in the Court of Civil Judge, Senior Division, B Court at Panjim, Goa and also an application for the interim maintenance. The learned Judge, however, declined interim maintenance by order dated 15<sup>th</sup> December, 2017. It is under these circumstances, she was forced to move to Mumbai at her parents' house and accordingly, she shifted to Mumbai in January, 2018 for betterment of their children and their education.

9           In the meanwhile, Petition for maintenance under Section 125 of the Code of Criminal Procedure, 1973 and application under Section 12 of the Domestic Violence Act at Panjim, Goa were withdrawn by her with a view to file the same in the Courts at Mumbai.

10           The applicant-wife thereafter filed Petition on 12<sup>th</sup> July, 2018 for dissolution of marriage under Section 13(1)(ia) of the Hindu Marriage Act, 1955 in the Family Court at Bandra.

11           The applicant-wife, is seeking transfer of the proceedings from Goa to Family Court at Mumbai on the following grounds:

(1) She cannot travel to and from Goa, which is 580 kms away from her parents' house at Mumbai.

(2) She has no accommodation at Panajim and she will be required to travel to attend the proceedings leaving minor children with her parents.

(3) She apprehends threat to her life considering the previous experience of abusive treatment at the hands of the respondent and her in-laws.

(4) Her father-in-law being Vice-President of the Bharatiya Janata Party in Goa may influence the proceedings at Goa and there may not be fair trial in the said proceedings.

(5) That convenience of wife and children are the major

considerations while exercising jurisdiction under Section 24 of the Code of Civil Procedure, 1908.

(6) That she has no means to maintain herself as her application for maintenance was also rejected by the Court at Goa.

12 This application is opposed by the respondents on the following grounds:

(a) The marriage was solemnised at Goa and is covered under the Portuguese Civil Code and, therefore, in view of this the Family Court, Mumbai is not Court of competent jurisdiction to entertain and dispose of the Petition filed by the husband for dissolution of marriage.

(b) That Family Court, Mumbai is not Court of domicile in terms of Portuguese Family Law which contains special provisions regarding dissolution of marriage being filed under Article 145(8) of the Portuguese Family Law and, therefore, same cannot be transferred to the Family Court for want of jurisdiction.

(c ) That even otherwise the applicant being resident of

Goa shifted to Mumbai only after order in custody application was passed by the Hon'ble Civil Judge so as to avoid the respondent from accessing his children and without his consent as it is not permissible under the provisions in the Act.

13 Husband has filed Application (St) No.32454 of 2018 under Section 24 of the Code of Civil Procedure, 1908 on the grounds;

(a) That their marriage is registered as per the Portuguese Civil Code and the governing family laws are that of Goa and, therefore, petition for divorce filed by the wife under the Hindu Marriage Act, 1955 is not maintainable.

(b) That he is willing to pay travelling expenses to the wife whenever she attends the proceedings at Goa.

14 Heard learned counsel for the parties.

15           The learned counsel appearing for the husband has raised the preliminary issue of the maintainability of this application filed in this Court. It is submitted that the application under Section 24 of the Code of Civil Procedure, 1908, if any, is required to be filed before the Court of Principal District Judge or before the permanent bench of Bombay High Court at Goa. It is submitted that in terms of the High Court of Mumbai (Extension of jurisdiction to Goa, Daman and Diu) Act, 1981 permanent bench of Bombay High Court to Goa, Daman and Diu came to be established and only the said Bench, is vested with the powers of hearing of cases in respect of State of Goa, Daman and Diu except in the event Hon'ble Chief Justice orders otherwise.

.           The very objection was raised in the case of Smt. Irene Blanch Khera v. Shri Glenn John Vijay in Miscellaneous Civil Application No.144 of 2018 and the learned Judge of this Court relying upon the Full Bench of this Court, in the case of **Edward Evan Pereira and Anr. v. Goncalo Jose Agnelo and Others 2011 (5) Mh.L.J. 550** has overruled the objection and held that, Court of Civil

Judge, Senior Division, Mhapusa where the proceedings are pending and the Family Court, Bandra where proceedings are sought to be transferred are the Courts subordinate to this Court, and this Court being, common High Court for both State of Maharashtra and State of Goa has the jurisdiction to decide the application under Section 24 of the Code of Civil Procedure, 1908.

. In view of this finding, objection about the maintainability of the application in this Court is overruled.

16 It is contended by the learned counsel for the husband that the matrimonial petition filed by him at Panajim is under Article 4(1) and 4 of the Family Laws of Goa as applicable in the State of Goa for dissolution of marriage and being filed under the special laws, in force in the State of Goa, the Family Court at Bandra is not a Court of competent jurisdiction to try and decide the said petition.

17 This submission cannot be accepted. The jurisdiction of the Family Court under Section 7 is to decide the matters relating to;

- (a) Marriage, validity, divorce, judicial separation, restitution;
- (b) Maintenance;
- (c) Guardianship and custody of children, including access;
- (d) Property of spouses.

Wherever Family Court is established in such cities the jurisdiction shall vest in the Family Court in view of the provisions of Section 7(1)(b) of the Family Courts Act, 1984. The wording clearly ousts the jurisdiction of the Civil Courts so far as the matters enumerated in the explanation clauses; once the Family Court is established for particular territory. Under Section 7 such jurisdiction over the matters would be irrespective of the law by which the marriage of the couple was governed.

. In this case, petition filed by the husband at Panjim is for dissolution of marriage which falls under Clause (a) of the explanation to Section. It is thus to be held Family Court at Mumbai would have jurisdiction to try and decide the Petition filed by the husband under Special/Local law of marriage applicable to the state of Goa.

18           It is argued by the learned Advocate Mrs. Sarnaik that Family Courts are not established at Goa and therefore Family Court, Mumbai is not deemed district Court or subordinate civil Court for exercising jurisdiction exercisable by the civil Judge, Panjim at Goa where husband's petition for dissolution of marriage is pending and of which transfer is sought under Section 24 of the Code of Civil Procedure, 1908.

          Though the submission is attractive, I am not in agreement with it for following reasons;

- (i)           Section 7(1)(a) of the Act, invest the Family Court with the jurisdiction in respect of matters that may fall under explanation to Section 7.
- (ii)          In this case petition for dissolution of marriage is one which falls under Clause (a) of the explanation.
- (iii)         Under Section 24 of the Code, High Court in exercise of general power of transfer and withdrawal may at any stage transfer any suit, appeal or other proceedings to any Court subordinate to it

and competent to try and dispose of.

(iv) Indisputedly Family Court and Court of Civil Judge, Panjim are Courts subordinate to the High Court.

(v) That jurisdiction over such matter in purview of clause (a) to (g) to explanation is irrespective of law by which marriage of couple is governed.

19 I, therefore, hold Family Court, Mumbai is Court of competent jurisdiction to try and dispose of the Petition for dissolution of marriage filed by the husband at Goa under Special/Local laws applicable to that State.

20 That under Section 24 of the Code of Civil Procedure, 1908, power of the High Court to transfer the cases cannot be whittled down so far as the matrimonial proceedings, initiated in the Courts, subordinate to High Court. In fact under Section 24 of the Code of Civil Procedure, 1908, the High Court has got unquestionable power to transfer the cases from one Court to other Court, as the

Family Court and the Court of Civil Judge, Senior Division, Panajim are Courts subordinate to High Court.

21           The learned counsel appearing for the wife has relied upon the judgment of the Apex Court in the case of **Vinisha Jitesh Tolani v. Jitesh Kishor Tolani AIR 2010 SC 1915** wherein the Petition was filed by the wife under Section 25 of the Code of Civil Procedure, 1908 for transfer of the matrimonial petition pending before the Civil Judge, Senior Division, Vasco-de-Gama to the Court of competent jurisdiction in Delhi. In the cited case, marriage between the Petitioner and the Respondent was solemnised in Goa according to the Hindu rites and customs and subsequently, the marriage was registered at Goa. The Husband had filed the petition for annulment of the marriage under Section 12 of the Hindu Marriage Act, 1955 at Goa. The transfer was opposed by the husband on the ground that the civil proceedings relating to the marriage was governed by the Civil Code of 1861, which was in force in Goa and that as a result, petition for annulment could not be tried in any State

other than Goa. It was contended that having regard to the provisions of Civil Code as prevalent in Goa, pending proceedings could not be heard and disposed of in a State other than Goa.

. Identical contentions are raised in the present petition on behalf of the husband, that marriage being registered under the prevailing laws applicable to the State of Goa, proceedings for the annulment of such marriage cannot be tried except at the Civil Court at Goa which would have jurisdiction to try proceedings of annulment of marriage.

22 The Apex Court in **Vinisha Jitesh Tolani (Supra)** held that “notwithstanding the fact that the marriage between the parties had been conducted in Goa, same having been conducted under their personal laws and under Hindu rites and traditions, we are satisfied that the claim of the petitioner is justified and there can be no difficulty in allowing the prayer of the Petitioner”. The Apex Court thus, directed petition pending in the Court of Civil Judge, Senior Division at Vasco-da-Gama, Goa be transferred to the Family Court at

Tis Hazari, Delhi for disposal in accordance with law.

. In my view though the transfer was sought under Section 25 of the Code, the judgment in the case of **Vinisha Jitesh Tolani (Supra)** is a complete answer to the points and objections raised by the learned counsel Ms. Sarnaik.

23 Ms. Sarnaik the learned counsel would contend that once decree is passed by the Civil Judge, Senior Division, Panajim, aggrieved party has right of appeal (First Appeal) before the District Court which is a substantive right and a party aggrieved by the judgment and decree passed in Regular Civil Appeal has a right of Second Appeal, which is also a substantive right and not merely a matter of procedure. Ms. Sarnaik submits that if the subject proceedings are transferred from Goa to Family Court, Mumbai, right of aggrieved party to prefer an appeal before the District Court would be taken away in-as-much as under the Family Court's Act, Under Section 19, appeal against every judgment or order lies before the High Court. It is, therefore, contended that right of appeal is a

substantive right and as it vests in a party as soon as proceeding is initiated, this vested right can not be taken away from the party by change in law unless change either expressly or by necessary implication does so. Reliance was placed upon the judgment of the Apex Court in the case of **Garikapati Veeraya v. N. Subbiah Choudhary AIR 1957 SC 540**, it is held in this case thus:

*“The right of appeal is a vested right and such a right to enter the superior Court accrues to the litigant and exists as on and from the date the lis commences and although it may be actually exercised when the adverse judgment is pronounced such right is to be governed by the law prevailing at the date of the institution of the suit or proceeding and not by the law that prevails at the date of its decision or at the date of the filing of the appeal.”*

24            Identical contention was raised in the case of **Mst. Ayesha Bai v. Daleep Singh AIR 1961 Rajasthan 186**. In this case, Petitioner had applied for review of decision given in the First Appeal. This appeal arose out of suit for recovery from the defendant. The Defendant had preferred counter claim in the suit which was eventually decreed and the suit was dismissed. Against that decree appeal was preferred before the High Court. In the First Appeal, High Court reversed the decision of the trial Court and decreed the suit of

the plaintiff and dismissed the counter claim of the defendant. Review of this judgment was sought on the ground that since the suit was valued at Rs.5,000/- in terms of the provisions of Rajasthan Civil Court Ordinance, 1950, the appeal lies to the District Court, against the decree of the trial Court and not to the High Court. The contention was also raised that the appellant was deprived of his right of Second Appeal by the High Courts entertaining the First Appeal. The Division Bench however, held thus:

*“ Petitioners contend that they have been deprived of a right of Second Appeal to this Court, which would have been available to them if the appeal had been decided by the District Judge. This contention is illusory. A right of Second Appeal to this Court is limited merely to errors of law. Here, they have had the advantage of the entire evidence being reviewed by the two judges of the superior Court who after a careful examination of the matter pronounced their judgment in the appeal.”*

25           It may be stated that under Section 19 of the Family Court Act, 1984 from every judgment and order not being interlocutory order of the Family Court, appeal lies to the High Court both on facts and law (emphasis supplied).

Thus, under Section 19 of the Family Courts Act, 1984,

aggrieved party has right to challenge the finding of the Family Court on the fact and on law before the Division Bench of the High Court. More so, right of Second Appeal to the High Court is limited to the errors of the law but under Section 19 aggrieved party gets advantage of entire evidence being reviewed by two judges of the superior Court. Therefore, in substance, right of the aggrieved party whose petition is transferred from Goa to Family Court at Mumbai is not deprived of his right to prefer an appeal either on the question of facts and/or law. More so, right of appeal is statutory right and not fundamental. In view of this submission of Mrs. Sarnaik is rejected.

26           It may also be stated that under Section 24, paramount consideration for exercise of the powers is to meet ends of justice. In the case of **Subramaniam Swami v. Ramkrishna Hegde (1990) 1 SCC 4**, dealing with power of Supreme Court to transfer case under Section 25 of the Code, it is held

“8           Under the old section the State Government was empowered to transfer a suit, appeal or other proceeding pending in the High Court of that State to any other High Court on receipt of a report from the Judge trying or hearing the suit that there existed reasonable grounds for such transfer provided the State

*Government of the State in which the other High Court had its principal seat consented to the transfer. The present Section 25 confers the power of transfer on the Supreme Court and is of wide amplitude. Under the present provision the Supreme Court is empowered at any stage to transfer any suit, appeal or other proceeding from a High Court or other Civil Court in one State to a High Court or other Civil Court of another State if it is satisfied that such an order is expedient for the ends of justice. The cardinal principle for the exercise of power under this section is that the ends of justice demand the transfer of the suit, appeal or other proceeding. The question of expediency would depend on the facts and circumstances of each case but the paramount consideration for the exercise of power must be to meet the ends of justice. It is true that if more than one court has jurisdiction under the Code to try the suit, the plaintiff as dominus litis has a right to choose the Court and the defendant cannot demand that the suit be tried in any particular court convenient to him. The mere convenience of the parties or any one of them may not be enough for the exercise of power but it must also be shown that trial in the chosen forum will result in denial of justice. Cases are not unknown where a party seeking justice chooses a forum most inconvenient to the adversary with a view to depriving that party of a fair trial. The Parliament has, therefore, invested this Court with the discretion to transfer the case from one Court to another if that is considered expedient to meet the ends of justice. Words of wide amplitude--for the ends of justice have been advisedly used to leave the matter to the discretion of the apex court as it is not possible to conceive of all situations requiring or justifying the exercise of power. But the paramount consideration must be to see that justice according to law is done; if for achieving that objective the transfer of the case is imperative, there should be no hesitation to transfer the case even if it is likely to cause some inconvenience to the plaintiff. The petitioner's plea for the transfer of the case must be tested on this touch-stone."*

27            In the case of **Kulvinder Kaur v. Kandi Friends Education Trust (2008) 3 SCC 659** , the Apex Court considered

various tests to be applied in respect of transfer of suits under Sections 24 and 25 of the Code and in paragraph 23 observed thus:

*“23. Reading Sections 24 and 25 of the Code together and keeping in view various judicial pronouncements, certain broad propositions as to what may constitute a ground for transfer have been laid down by Courts. They are balance of convenience or inconvenience to plaintiff or defendant or witnesses; convenience or inconvenience of a particular place of trial having regard to the nature of evidence on the points involved in the suit; issues raised by the parties; reasonable apprehension in the mind of the litigant that he might not get justice in the court in which the suit is pending; important questions of law involved or a considerable section of public interested in the litigation; interest of justice demanding for transfer of suit, appeal or other proceeding, etc. Above are some of the instances which are germane in considering the question of transfer of a suit, appeal or other proceeding. They are, however, illustrative in nature and by no means be treated as exhaustive. If on the above or other relevant considerations, the Court feels that the plaintiff or the defendant is not likely to have a fair trial in the Court from which he seeks to transfer a case, it is not only the power, but the duty of the Court to make such order.”*

28 In this case;

- (i) Wife is residing at Mumbai and distance between Goa and Mumbai is about 1000 km to and fro;
- (ii) She has no place to stay at Goa;
- (iii) Two school going children are under her care;
- (iv) Maintenance is denied to her by the Court;

(v) She has no independent source of income (at least not pointed out by the respondent-husband);

(vi) Circumstances brought on record like of press conferences called by her father-in-law, and he being head of political party, reasonable apprehension in her mind that she might not get justice cannot be completely overlooked ;

are the facts which require consideration while exercising the jurisdiction under Section 24 of the Code. Though husband is ready and willing to pay cost of traveling and stay, in my view that itself will not mitigate the inconvenience to the wife, her children and witnesses.

29           Considering all the facts and circumstances as well as submissions made by the learned counsel and keeping in mind the decisions of the Apex Court cited above, in my view, applicant-wife would be deprived of fair trial if she is made to contest proceedings at Goa which is about 1000 kms away from her place of residence to and from in the facts and circumstances of the case.

30            Thus, following order:

(a)    Miscellaneous Civil Application No.265 of 2018 is allowed and following proceedings are transferred from the Court of Ad-hoc Civil Judge, Senior Division and Senior Civil Judge at Panjim, Goa to the Family Court at Bandra, Mumbai::

(i)    Civil Miscellaneous Application No.73 of 2017 ;

(ii)   Civil Miscellaneous Application No.77 of 2017/B ;

(iii) Marriage Petition No.53 of 2018/B .

(b)    Miscellaneous Civil Application (St) No.32454 of 2018 is dismissed.

(c)    Parties to appear before the learned Judge, Family Court, Bandra on 22<sup>nd</sup> April, 2019 either personally or through their advocate.

(d)    The parties, as well as, the learned Judge, Family Court, Bandra to act on an authenticated copy of this order;

**(SANDEEP K. SHINDE, J.)**