

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO. 7 OF 2019

Manisha Prakash Jadhav ...Applicant
V/s.
Mr. Prakash Anandrao Jadhav ...Respondent

Mr. P.D. Dalvi a/w Kalpesh Patil for the Applicant.
Ms. Megha Bajoria for the Respondent.

CORAM: K.K.TATED, J.
DATED : 26/08/2019

P.C.

1 Heard learned Counsel for the parties.

2 By this Misc. Civil Application under Section 24 of Code of Civil Procedure, 1908, the Applicant wife is seeking transfer of Marriage Petition No. 755 of 2015 filed by the Respondent husband before the learned Civil Judge, Senior Division, Pune to the Court of Civil Judge, Senior Division, Vaduj Dist. Satara.

3 The learned Counsel for the Applicant submits that Applicant being a housewife, it is very difficult for her to attend each and every date at Pune in Marriage Petition No.755 of 2015. He submits that even the Criminal Case under Section 498-A of IPC filed by the Applicant is pending before Court at Vaduj. He submits that earlier the husband filed Criminal Application No. 93 of 2013 before this Court for transferring Criminal case filed by the Applicant under provisions of the Protection of Women from Domestic Violence Act from Vaduj to Pune. By the order dated

01.08.2013, this Court rejected the said Misc. Civil Application. He submits that the said proceeding under Section 498-A of IPC is pending at Vaduj. Therefore, in the interest of justice, this Hon'ble Court be pleased to transfer the marriage petition No. 755 of 2015 filed by the Respondent-husband from Pune to Vaduj for hearing and final disposal on its own merits. He submits that though the Respondent has pleaded that he is working as a driver, but actually he is a Director in the two Companies. The Respondent is educated, in degree of Engineering. In support of his contention, the learned Counsel for the Applicant relies on para 24 of the common Judgment dated 19.09.2018 passed by the Court of Additional District Judge, Vaduj in Criminal Appeal No. 18 of 2015. He further submits that at the time of deciding the application under Section 24 of Code of Civil Procedure, 1908 convenience of wife to be considered. On the basis of this submissions, the learned Counsel for the Applicant submits that in the interest of justice, this Hon'ble Court be pleased to allow the application and transfer the matter filed by the Respondent husband from Pune Court to the Court at Vaduj. He submits that if application is not allowed, irreparable loss will be caused to the Applicant.

4 On the other hand, the learned Counsel for the Respondent vehemently opposed the present application. She submits that actually both the children are studying in Chinchwad, Pune. Both the children are staying at Pune only. In support of this contention, the learned Counsel for the Respondent relied on the rejoinder filed by the Applicant on 05.07.2019. She submits that both the children are staying at Pune. So definitely Applicant wife

may be attending the school meeting at Pune only. Apart from that the learned Counsel for the Respondent submits that distance between Vaduj to Pune is not more than 150 k.m. She submits that Applicant wife can travel from Vaduj to Pune. She further submits that Respondent husband is ready and willing to pay Rs.2,500/- to wife for her every visit to the Court at Pune. Therefore, there is no question of allowing this Misc. Civil Application.

5 I heard learned Counsel for the both side at length.

6 It is to be noted that in the present proceeding, the Applicant wife filed rejoinder dated 05.07.2019, where she admitted that both the children are taking education at Pune. The age of son is 13 years and a daughter is 7 years.

7 It is to be noted that the distance between Vaduj and Pune is just 150 k.m. i.e. not more than 3 to 4 hours journey. Apart from that, the matter is at Pune for cross-examination of Respondent husband. The Respondent husband is ready and willing to pay sum of Rs.2,500/- by way of expenses to the Applicant wife for attending on each and every date, whenever she will remain present.

8 It is to be noted that Punjab and Hariyana High Court in the matter of *Veena V/s. Vinay Kumar reported in I (1992) DMC 59* held that convenience of wife cannot be accepted as a Rule for transfer of the case. Paragraph 11, reads thus:

“11. The petitioner has miserably failed to make

out a case for transfer. She has pleaded for her convenience alone which as already observed, is not bona fide one particularly when a very reasonable and legitimate offer of transfer of the case between the parties to the competent Courts at Jalandhar is not acceptable to her. Each case is to be viewed and decided, on the basis of its own facts. The convenience of one party to the litigation i.e. wife alone, cannot be accepted as of rule for the transfer of a case. The Court is required to adopt a balanced view of convenience of both the parties, of course may be with some premium in favour of the wife. In this case, transfer of the case shall certainly result in inconvenience to the respondent/husband and his material witnesses if the trial is transferred to a Court at Ferozepur. Even otherwise, a very strong case is to be made out for transfer of the case from an ordinary Court of competent jurisdiction. The parties last resided at Jagadhri and it is only at this place that where a divorce petition is to be filed and tried. The petitioner has miserably failed to make out a case for taking the case out of the hands of a Court of competent jurisdiction at Jagadhri in terms of Section 24 of the Code of Civil Procedure.”

9 It is to be noted that the Apex Court in the matter of **Preeti Sharma Vs. Manjit Sharma (2005) 11 SCC 535** held that if other side is ready and willing to bear the expenses, there is no question of transferring the matter from one place to other place always at the request of the wife. Paragraph 2 of the said judgment reads thus:

“2. The grounds made out are that the Petitioner is an unemployed lady and totally dependent on her uncle and that she will be hard-pressed to defend the suit at Muzaffar Nagar. It is also claimed that there is a petition for restitution of conjugal rights and certain other proceedings pending in Delhi. In our view, no substantial ground for transfer has been made out. If the Petitioner wishes that all cases be tried at one place, she may apply for the same and

we will transfer the cases pending in Delhi to Muzaffar Nagar. Merely because the Petitioner is a lady does not mean she cannot travel to Muzaffar Nagar. At the highest she can be paid expenses for travel and stay. We, therefore, direct that the Respondent shall pay to the Petitioner and a companion travel and stay expenses on every occasion that the Petitioner is required to go to Muzaffar Nagar. The Court at Muzaffar Nagar shall ensure that such payment is made to the Petitioner on every occasion. With these directions, the transfer petitions are dismissed.”

10 In the matter of **Anindita Das Vs. Srijit Das (2006) 9 SCC 197** the Apex Court held that it is not necessary always to transfer the petition from one place to another as per the convenience of the wife / lady. Paragraph 3 of the said judgment reads thus

“3. Even otherwise, it must be seen that at one stage this Court was showing leniency to ladies. But since then it has been found that a large number of transfer petitions are filed by women taking advantage of the leniency shown by this Court. On an average at least 10 to 15 transfer petitions are on board of each admission day. It is, therefore, clear that leniency of this Court is being misused by the women.”

11 In view of the above mentioned fact and the law declared by the Apex Court, I am of the opinion that it is not necessary to transfer the matter from Pune to Vaduj.

12 Hence, the following order is passed:

a) Application filed by the Applicant wife under Section 24 of Code of Civil Procedure, 1908 for transferring the Marriage Petition No. 755 of 2015 from the Civil Judge, Senior Division, Pune to the Civil Judge, Senior Division, Vaduj, is rejected.

b) Respondent husband is directed to pay a sum of Rs.2,500/- to the wife whenever she will attend the matter at Pune.

c) If there is any default in payment of the charges Rs.2,500/-, liberty granted to the Applicant to take appropriate steps against the husband.

d) Misc. Civil Application is disposed of accordingly.

(K.K.TATED, J.)