

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

MIS. CIVIL APPLICATION NO.3 OF 2019

Sou. Chitra Amol Patil

... Applicant

Vs

Mr. Amol @ Devendra Ravindra
Patil

... Respondent

...

Mr. Pramod J. Pawar for the Applicant.

Ms. Seema Sarnaik with Mr. Ameya Tamhane for the Respondent.

CORAM : SANDEEP K. SHINDE J.

DATE : APRIL 15, 2019

ORDER:

It is an application under Section 24 of the Code of Civil Procedure, 1908 preferred by the applicant-wife, seeking transfer of the Petition No.1106 of 2018 from Family Court, Pune to Family Court, Bandra at Mumbai.

2 The only ground on which transfer is sought is the inconvenience likely to cause to the applicant and her twin daughters of 6 years old under her care, who may have to travel from Mumbai to Pune.

3 Husband has filed Petition for dissolution of marriage in August, 2018 and soon thereafter, this application was filed in December, 2018.

4 It is submitted by the learned counsel for the applicant that though the applicant-wife is well qualified, at present she is not working and her parents are senior citizens with whom she is living. It is submitted that twin daughters, are attending the school and applicant's parents due to their age are not able to look after them and it is one of the reasons for not taking up a job. It is submitted that if the applicant is required to attend the Court at Pune, it will cause inconvenience to her and hardship to her daughters.

5 The learned counsel for the respondent has filed affidavit-in-reply and pointed out that in April, 2017, applicant-wife withdrew herself from the company of the husband and for sometime she was living at Pune in rental accommodation with her daughters. It is submitted that the respondent had paid entire school fees of his minor daughters for the academic year 2017-18. It is

submitted that the applicant-wife attended the proceedings at Pune Family Court in October, November and December, 2018. It is submitted that the respondent may have to take leave and attend the proceedings at Mumbai but since applicant is homemaker, no inconvenience will be caused to her. It is submitted that since applicant-wife is not working, she can attend the proceedings at Pune and the respondent will pay reasonable traveling expenses to her.

6 I have perused the application and the affidavit-in-reply filed by the respondent.

7 Likely inconvenience and hardship caused to the wife and her minor daughters is to be given primary importance while dealing with application filed under Section 24 of the Code of Civil Procedure, 1908. In the case at hand, petition for dissolution of marriage was filed in August, 2018. It is not in dispute that two minor daughters of six years age are under care of the applicant-wife, who are attending school at Mumbai. Photographs placed on record by the learned counsel for the respondent, show, the parents

of the applicant-wife, are Senior Citizens. It appears that the respondent herein has also filed application seeking access to his minor daughters and that application is pending. However, as an interim measure, the learned Judge Family Court vide order dated 19th October, 2018 granted access during Diwali Vacation.

8 The learned counsel for the respondent has relied upon the orders passed by this Court in Miscellaneous Civil Application Nos.25 of 2017, 40 of 2017 and 1432 of 2017. In my view, orders passed in these applications were in the given set of facts and thus cannot be cited as precedent.

9 In the case of **Sumita Singh v. Kumar Sanjay and Another** AIR 2002 Supreme Court 396, the Apex Court has held thus:

“It is the husband's suit against the wife. It is the wife's convenience that, therefore, must be looked at. The circumstances indicated above are sufficient to make the transfer petition absolute.”

In the above-mentioned case, a transfer petition was filed by the wife for transfer of matrimonial proceedings filed by her husband, pending in Bhojpur, Bihar to Delhi on the grounds inter-alia that she

is living and working in Delhi.

10 In the case at hand, the applicant-wife is residing at Mumbai with her minor twin daughters, who are attending the school at Mumbai. Her parents are Senior Citizens, who may not be in a position to take care of the minor children. If the application is not granted, applicant-wife will suffer more inconvenience and hardship than respondent-husband. Even otherwise if application for access to daughters is granted, respondent may have to travel to Mumbai.

11 In view of this, application is allowed in terms of prayer clause (a). Hence, the following order:

(1) The learned Judge, Family Court, Pune shall transfer the papers and proceedings in Marriage Petition No.1106 of 2018 to the Family Court, Bandra at Mumbai.

(2) The parties as well as the, learned Judge, Family Court, Pune to act on authenticated copy of this order.

(3) Both the parties shall appear before the Family Court, Bandra, Mumbai on 11th June, 2019.

(4) The Miscellaneous Civil Application No.3 of 2019 is allowed in the aforesaid terms. No order as to costs.

12 The learned counsel for the respondent seeks stay of this order. Thus, operation of the order is stayed for a period of five weeks.

(SANDEEP K. SHINDE, J.)