

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

30 MISC.CIVIL APPLICATION NO.32 OF 2019

ARCHANA SANTOSH THORAT
VERSUS
SANTOSH KANTILAL THORAT

...
Advocate for Applicant : Mr. Deshmukh Shivraj V.
Advocate for Respondent : Mr. N.D. Batule
...

**CORAM : ROHIT B. DEO, J.
DATED : 12th FEBRUARY, 2020.**

PER COURT:-

. The applicant-wife is seeking transfer of H.M.P. 291 of 2016 preferred by the respondent-husband in the Court of Civil Judge Senior Division, Kalyan, to Civil Judge Senior Division, Shrigonda, District Ahmednagar.

2. The averments in the application have gone unchallenged in the absence of affidavit in response.

3. I have heard the learned counsel for the applicant and the learned counsel for the non-applicant at length.

4. Although the averments in the application are not rebutted, the learned counsel for the non-applicant is strongly opposing the transfer.

5. I am inclined to allow the application and to transfer the proceedings to Shrigonda, for reasons spelt out

hereinafter.

6. The applicant has stated on oath, which statement is substantiated by medical papers inter alia hospital discharge slip of the military hospital, that she suffered a fracture in 2016 and that she was admitted in the military hospital for removal of the implant. The statement in the application that the ability of the applicant to undertake travel is seriously impaired, has gone unchallenged. The distance between Shringonda and Kalyan is approximately 275 kms.

7. The applicant-wife has also instituted proceedings of restitution of conjugal rights under Section 9 of the Hindu Marriage Act and under the Protection of Women from Domestic Violence Act at Shringonda. The learned counsel for the non-applicant husband would submit that institution of the proceedings is a strategic step in order to make out a case for transfer. The learned counsel for the non-applicant points out that the proceedings are instituted after the institution of divorce petition by the husband at Kalyan. I am not inclined to make any decisive observation on the said submission.

8. Suffice it to note, that the proceedings under Section 9 of restitution of conjugal rights and proceedings

under Section 13(1)(i-a) and (i-b) of the Hindu Marriage Act for dissolution of marriage would have to be heard and decided, as far as possible together and by the same Court. It is but obvious, that both the proceedings are likely to have commonality of facts and issues. While the learned counsel for the non-applicant may or may not be justified in submitting that institution of the proceedings seeking restitution of conjugal rights is a strategic step, I cannot start with the presumption that the institution of the proceedings is malafide.

9. If the aspect of comparative hardship is seen, admittedly the non-applicant husband is not residing at Kalyan. He is serving as a military personnel and the learned counsel for the non-applicant states that he is posted at military station close to border. In any event, the non-applicant husband would have to attend the proceedings at Kalyan. In this view of the matter, instead of coming to Kalyan, all that the non-applicant husband will have to do is to attend the proceedings at Shrigonda. The balance of convenience therefore tilts in favour of the applicant-wife.

10. The learned counsel for the non-applicant is relying on the decision in Rushali Suryakant Gade Vs.

Suryakant Pandurang Gade in Misc. Civil Application 142 of 2019. The factual matrix in the said decision would reveal that the wife was receiving maintenance, that the husband was ready and willing to pay for the travelling expenses of the wife and that the application seeking transfer was preferred 7 years after the commencement of the proceedings and the conclusion of evidence. The decision is rendered in the facts of that case.

11. In the light of the above discussion, the application is allowed in terms of prayer clause (B), which reads thus:

“(B) Issue an order thereby transferring the Marriage Petition No.291/2016 filed and pending before the Hon’ble Civil Judge Senior Division, Kalyan to Civil Judge Senior Division, Shrigonda, Dist Ahmednagar and for that purpose issue necessary orders.”

(ROHIT B. DEO, J.)