

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

MISCELLANEOUS CIVIL APPLICATION NO.88 OF 2020

Sau. Utkarsha w/o Swaresh Pawar
Age 27 yrs, Occ.Household
r/o c/o Dr. Sanjay Bapurao Nikale
Jivhala Bungalow, 1st Floor,
Indiranagar, near Jain Temple,
Rahata, Tq. Rahata, Dist.Ahmednagar.

Applicant

Versus

Swaresh s/o Vijay Pawar
Age 29 years, occ. Service
r/o C-10, Akashwani Qrts.
C/o Mr.Vijay Pawar,
Ganesh Khind Road, Shivaji nagar
Pune - 411 016.

Non-Applicant.

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Advocate Mr.Yunus Bashir Pathan for the applicant
Advocate Mr.Vilas Panpatte for respondent.

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CORAM : MANGESH S. PATIL, J.

DATE : 10.12.2020

PC. :-

This is an application under Section 24 of the Code of Civil Procedure by a wife for transfer of P.A.No.1377/2019 pending before the Family Court at Pune to the Court at Rahata, which is a proceeding for divorce instituted by respondent-husband.

2] The learned Advocate for the applicant submits that the parties have

separated soon after the marriage on 18/1/2019. Since separation she has been residing with her parents at Rahata. On the date of filing of the application she was 36 weeks pregnant and has given birth to a child during pendency of the application. It is therefore difficult for her to commute between Rahata and Pune for attending the proceeding. He would also point out that she has already instituted a proceeding under the Protection of Women from Domestic Violence Act which is pending in a Court at Rahata. Similarly she has also instituted a proceeding for maintenance under Section 125 of the Cr.P.C. which is also pending at Rahata. Being unable to maintain herself she has claimed interim maintenance from the respondent. He is an Engineer working with L.T.E. company at Pune and earning Rs.80,000/- per month. No one is dependent on him. Therefore, looking to all the facts and circumstances, the applicant would face a greater hardship if the matter is allowed to continue at Pune than that would be faced by the respondent if it is transferred to Rahata. He would even otherwise be required to attend the two proceedings at Rahata.

3] In support of his submission the learned advocate also placed reliance on the following decisions :

- 1] Vaishali Shridhar Jagtap V/s Shridhar Vishwanath Jagtap; AIR 2016 SC 3584.
- 2] Soma Choudhury V/s Gourab; 2004 DGLS SC 1260.
- 3] Sumita Singh V/s Kumar Sanjay & Anr.; AIR 2002 SC 396
- 4] Mona Aresh Goel V/s Aresh Satya Goel; 2000 AIR SCW 2652
- 5] Renu Gautam V/s Vonod Gautam; AIR 2000 SC 3405(1)
- 6] Ravinder Kaur V/s Hitinder Singh; AIR 2000 SC 3403(2)
- 7] Anjali Ashok Sadhwani V/s Ashok Kishinchand Sadhwani; AIR 2009 SC 1374.
- 8] Mahadev Gopal Mehetre V/s Gopal Prabhakar Mehetre;

- 2015 DGLS (Bom.) 115.
- 9] Kalpana Pankaj Rozatkar V/s Pankaj Supadu Rozatkar; 2014(1) Mh.L.J.32.
- 10] Dr.Sau.Nilima Mahesh Muley V/s Mahesh Madhavrao Muley; 2013(1) ALL MR 398.

4] As against this, the learned advocate for the respondent referring to the affidavit in reply submits that though it is a matter of fact that the applicant has filed couple of proceedings which are pending at Rahata, her other contentions that her parents are weak and poor is not correct. Her father is a Veterinary Doctor in a Government employment and mother is serving as a Staff Nurse who is also in the Government employment. They are drawing sumptuous salaries. The whole purpose to make this application is to harass the respondent and make him commute between Pune and Rahata. In fact there is genuine danger to his life and limb if he goes to Rahata. In support of his such version he places reliance on excerpts of several telephonic communications wherein the language used by applicant's relatives from parental side which demonstrates that they are threatening him of dire consequences. He therefore, submits that the request of the applicant may not be considered.

5] The learned advocate Mr.Panpatte for the respondent also submits that instead of transferring the proceeding from Pune to Rahata in the peculiar facts and circumstances and in view of the apprehension being expressed by the respondent, he is ready to pay her necessary expenses for commuting between Rahata and Pune on the dates of the proceedings in the Pune Court. He also on instructions states that his client is ready to pay Rs.3500/- per trip to her.

6] I have carefully perused the papers. It is trite that in the decisions cited on behalf of the applicant, convenience of wife has been regarded as a paramount consideration. However, simultaneously one needs to bear in mind the observations of the Supreme Court in the case of **Anindita Das V/s Srijit Das; Transfer Petition (Civil) No.191/2005 with T.P.(C) No.146/2005** wherein a note of caution is sounded to the effect that it is not that the Court should inevitably take a lenient view in favour of the wife. It is laid down that the Court should take conscious decision depending upon the facts and circumstances of each case.

7] Bearing in mind the principles enunciated in all these matters if one adverts to the facts in hand, it is apparent that the apprehension being expressed by the respondent-husband is well founded. As can be appreciated from the transcripts of the telephonic conversations/Whatsapp conversations between members of both sides, the language being used against the respondent and his family members *prima facie* shows that there is a genuine reason for the respondent to be apprehensive about his safety if he goes to Rahata. Pertinently in the rejoinder affidavit of the applicant use of such language has not been denied but has been sought to be explained away. The fact remains that there are sufficient and reasonable grounds for the respondent being apprehensive of attending the matter at Rahata.

8] True it is that the other two proceedings instituted by the applicant are pending at Rahata and even if the present matter is not transferred, he will have to go to Rahata to attend the two other proceedings. That may be a case but when on an independent scrutiny it is found that there is a risk to the life and limb of the respondent, if he goes to Rahata, it would be a sufficient

ground to refuse to transfer the proceeding as prayed for by the applicant.

9] However, since she has recently given birth to a child, she may have to commute with the child and may be with some assistance. It would therefore, in the peculiar facts and circumstances, appropriate to give her expenses for such commutation instead of transferring the matter.

10] The application is partly allowed. The request of the applicant for transfer of the proceeding is rejected. However, respondent shall pay her Rs.5000/- per trip for attending the proceeding at Pune as and when she personally remains present. The Family Court, Pune shall ensure that he pays such costs to her on the very same day on which she attends the proceeding at Pune.

[MANGESH S. PATIL, J.]

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