

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

68 MISC.CIVIL APPLICATION NO.30 OF 2019

**ARCHANA SACHIN SANGHVI AND OTHER
VERSUS
SACHIN SUMITLAL SANGHVI**

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Advocate for Applicants : Mr. Choudhari N. L.
Advocate for Respondent : Mr. Sawant Amol S.

CORAM : MANGESH S. PATIL, J.
DATE : 06.09.2021.

PER COURT :

This is an application under Section 24 of the Code of Civil Procedure by a wife against her husband seeking transfer of H.M.P No. 17/2018 (old No. 185/2015) filed by him in the Family Court at Dhule to the Family Court at Latur.

2. The learned advocate for the applicant submits that since after separation the applicant has been residing at her parental home in Latur. She has instituted a proceeding under Protection of Women from Domestic Violence Act in a Court at Latur. She has couple of daughters from the respondent-husband and is unable to remain present and conduct the divorce proceeding filed by the respondent at Dhule. The distance between the two places is more than 400 k.m. In order to avoid hardship being caused to her the divorce proceeding can be conveniently transferred to Latur. He would further submit that the wife is a weaker partner and her convenience is to be the paramount consideration and the proceeding may be transferred. The learned advocate has relied upon following citations :

(1) Vaishali Shridhar Jagtap Vs. Shridhar Vishwanath Jagtap;
2016(6) ALL M.R. 449.

- 2) *Rakhi Banerjee Vs. Subhankar Mukherjee; 2008(17) Supreme Court Cases, 59.*
- 3) *Sau. Shila Nitin Rajure @ Shila Devrao Vatwale Vs. Nitin Rajure in Misc. Civil Application No. 184/2017 dated 09.01.2018.*
- 4) *Neha @ Suvarna Parag Pawa Vs. Parag Prakash Pawar; in Misc. Civil Application No. 6/2018 dated 11.12.2018.*

3. The learned advocate Mr. Sawant for the respondent submits that the applicant has not come to the Court with clean hands. She has not disclosed all the facts and circumstances. The divorce proceeding is instituted in the year 2015. She has also participated in the hearing. Cross-examination of the respondent was also conducted on her behalf and it is thereafter that she stopped attending the proceeding and has filed this application after about four years of filing of the divorce proceeding. If she has already been able to participate in the enquiry at Dhule, the excuse now being put forth is lame.

4. The learned advocate would further point out that having been given ample opportunity to the applicant to remain present and contest the proceeding, she having not turned up, the learned Judge had to close the evidence and now the matter has been adjourned for hearing arguments. In similar fact scenario this Court in the case of **Sau. Divya Mahendra Kulkarni Vs. Mahendra Suresh Kulkarni in Misc. Civil Application No. 66/2017 by order dated 27.07.2017** has refused to transfer the proceeding.

5. There are series of judgments of the Apex Court touching the aspect of transfer of proceedings in matrimonial disputes. The comparative hardship being faced by a wife is considered to be of paramount importance. Obviously, she being a weaker of the partners, the Courts in a normal course should lean in her favour.

6. However, the facts situation in the matter in hand is peculiar. The divorce petition was filed by the respondent in the court at Dhule way back

in the year 2015 whereas after lapse of four years the wife has chosen to file this application for transfer of the proceeding. In the meantime she has taken care to defend the proceeding at Dhule by engaging an advocate. Not only this but as can be seen from the Roznama of that proceeding filed with the affidavit in reply of the respondent (Exh. R-4) even the cross-examination of the respondent on behalf of the applicant has been conducted by her learned advocate. It is thereafter that she remained absent and the matter was closed ultimately for arguments. It is therefore quite apparent that the matter before the Family Court at Dhule is a part heard matter and the learned Judge who has recorded the testimony of the respondent must have had an occasion to apply the mind and even must have noted the demeanor of the witness. It is in view of such peculiar state of affairs, in my considered view, this Court should be slow in conceding to the request for transfer once the matter has become part heard. Certainly, the interest of the applicant can be protected by directing the respondent to pay her a specific sum as and when she is required to or attends the proceeding at Dhule.

7. In view of above, in my considered view the applicant is not entitled to claim transfer of the application, however, she will have to be directed to be compensated for the expenses required to be incurred by her for commuting between Latur and Dhule.

8. The Application is rejected, however, the respondent shall pay to the applicant-wife Rs. 2500/- (Rs. Two Thousand and Five Hundred only) for every date she attends the proceeding at Dhule.

9. The learned Judge of the Family Court Dhule shall see to it that this direction is obeyed by the respondent punctually.

(MANGESH S. PATIL, J.)

mkd/-