

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
MISCELLANEOUS CIVIL APPLICATION NO.162 OF 2021

Kirti Ganesh Ekal .. Applicant
Versus
Ganesh Waman Ekal .. Respondent
...

Mr.Veerdhaval Kakade for the Applicant.

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CORAM: BHARATI DANGRE, J.
DATED : 06th OCTOBER, 2021

P.C:-

1. By the present application, the Applicant/Wife is seeking transfer of H.M.P.No.485 of 2020 instituted by the Respondent/Husband in the Court of Civil Judge, Senior Division, Satara to the Court of Civil Judge, Senior Division, Malshiras, District Solapur, where she has instituted Marriage Petition No.56 of 2020 for restitution of her conjugal rights.

2. Heard learned counsel for the Applicant.

3. The transfer is sought on the ground that the Applicant is residing at a place from where the Court of Malshiras is located at a distance of 16 k.m. and the distance between Solapur and Satara is 100 k.m. Inconvenience is pleaded to travel the said distance on each date of hearing, particularly

when, at present the Applicant is residing at Natepute and she will be required to travel approximately 100 k.m. to attend the proceedings. The cost of the travel to attend the proceedings is projected as one of the grounds for transfer.

4. The jurisdiction to be exercised by the Court under Section 24 of the Code of Civil Procedure (“**The Code**”) is based on equity and fairness. There is no straight jacket formula for exercise of the said power nor inconvenience of the parties is the only factor which is expected to be looked into. The Hon’ble Apex Court in case of **Indian Overseas Bank, Madras Vs. Chemical Construction Company & Ors.**¹ has categorically held that the power of transfer of proceedings shall not be exercised lightly and though the inconvenience of the parties may be considered as one of the predominant factor in exercising the power, it is not the sole factor which shall be taken into consideration.

5. Learned counsel for the Applicant has placed reliance on the judgment of the Hon’ble Apex Court in case of **Sumita Singh Vs. Kumar Sanjay & Anr.**² as well as on the judgment of the Hon’ble Supreme Court in case of **Rajani Kishor Pardeshi Vs. Kishor Babulal Pardeshi**³ whereby the transfer has been allowed. Pertinent to note that in case of **Sumita (supra)**, transfer is allowed from Bhojpur, Bihar to Delhi whereas in case of **Rajani (supra)**, transfer is allowed from Panvel, Mumbai to Satana (M.P.). No doubt, their Lordships of the

1 (1979) 4 SCC 358

2 (2001) 10 SCC 41

3 (2005) 12 SCC 237

Hon'ble Apex Court in both the cases, considered the distance travelled by the wife as a predominant factor and exercised its power under Section 25 of the Code. As far as the present case is concerned, the distance is barely 100 k.m. and merely on the ground that it would be causing inconvenience to the Applicant to attend the proceedings instituted by the Respondent at Satara, since the marriage was solemnized at Satara, cannot be the only factor which can be taken into account. As far as the expenses of the travel are concerned, on an appropriate application being moved by the Applicant, the Court may grant expenses of travel, in her favour and the financial aspect of the inconvenience in undertaking the journey from Solapur to Satara can be taken care of.

No case is made out for exercise of jurisdiction under Section 24 of the Code. The application is rejected.

(SMT. BHARATI DANGRE, J.)