

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
MISC. CIVIL APPLICATION NO.113 OF 2021**

Amit Anand Shetty & Ors. .. Applicants

Vs.

Nivedita Amit Shetty .. Respondent

...

Mr. Jai A. Vaidya i/b Ms. Anushka Pavaskar for the applicant.

Mr. Kokila Kalra for the respondent.

...

CORAM : SMT. BHARATI DANGRE, J.

DATED : 28TH OCTOBER, 2021.

P.C:-

1. Heard learned counsel for the applicant and learned counsel for the respondent.

2. The applicant-husband has invoked the jurisdiction of this court under Section 24 of the C.P.C. to seek transfer of proceedings filed by the wife under the provisions of the Domestic Violence Act pending before the Judicial Magistrate, First Class at Belapur and clubbing of the same with the Divorce

AJN

Petition No.479 of 2018 filed by the husband in the Family Court at Thane.

3. The marriage between the parties being solemnized in the year 2013, a daughter is born out of the said wedlock in 2014. Since 2016, the parties have started residing separately and after this event, the various proceedings are instituted by each of them, which have been briefly referred to as above.

4. The ground on which the proceedings filed by the wife at Belapur is sought to be transferred to Thane by the husband is to have congeniality of various proceedings and to avoid multiplicity and also to avoid conflicting orders being passed. The distance between Thane to Belapur being 25 to 30 kilometers, the submission advanced is to the effect that it is not difficult for the wife, who is residing in Vashi to travel to Thane. It is also informed that if the proceedings are clubbed together and adjudicated, it will save the time of the court as well as the time of the parties since the entire dispute between them in whatsoever form, shall be before one court.

5. The marriage petition in the Family Court is pending for filing of written statement and it is informed that even the counselling is yet to start.

6. As far as the proceedings under the Domestic Violence Act

are concerned, an application for interim maintenance was moved, but in the present miscellaneous civil application, on 08/09/2021, this court had granted a stay to the said proceedings before the Magistrate in the Domestic Violence proceedings and, therefore, they are still at the same stage since 08/09/2021.

7. On hearing learned counsel for the applicant and respondent and looking to the nature of the discord between the parties, I deem it expedient to club the proceedings and since it is the Family Court, which can exercise the jurisdiction of the Magistrate under the Domestic Violence Act, but which cannot be vice-a-versa, the proceedings would be transferred to the Family Court, Thane, which can also adjudicate upon the application filed by the wife invoking provisions of the Domestic Violence Act.

8. The powers of the Family Court would empower it to determine the application under the Domestic Violence Act in the light of the decision in the case of **Sumita Singh v. Kumar Sanjay & Anr.** reported in **AIR 2002 SC 396.** Moresoever, this will not cause any hardship to the respondent-wife since the Family Court at Thane is located barely 30 kilometers from her residence and she will be saved of the hardship of attending the proceedings at Thane and Belapur. However, since it has been pointed out to me that the application for interim maintenance is pending in the court of the Magistrate, Belapur, on transfer, the

Family Court is requested to grant utmost priority to the interim maintenance application, which was heard and likely to be disposed of by the Magistrate when the order of stay was passed by this court. In such circumstances, I deem it expedient to allow the application in terms of prayer clause (a), which reads thus:

“(a) The Applicants state that it is therefore necessary that this Hon’ble Court be pleased to exercise its extraordinary powers under section 24 of the Code of Civil Procedure and/or Article 226/227 of the Constitution of India, calling for the record and proceedings of the D.V. Application bearing no. Cri. M.A. 88 of 2019 pending before the Hon’ble 10th Court of Ld. JMFC at CBD, Belapur and be pleased to transfer the said proceedings the Hon’ble Family Court, Thane at Thane, wherein the Divorce Proceedings filed by the Applicant No.1 bearing No.A-521/2019 is pending.”

9. The JMFC at CBD, Belapur is directed to forthwith transfer the D.V. proceedings being Cri. Misc. Application No.88 of 2019 pending before it to the Family Court, Thane. Learned Judge, Family Court, Thane shall club the said proceedings along with Divorce Petition No.479 of 2018 renumbered as A-521 of 2019.

10. In the wake of the petition being renumbered, learned counsel for the applicant is at liberty to amend the prayer clause

of the present application. The amendment shall be carried out forthwith. The application is disposed of in the aforestated terms.

[SMT. BHARATI DANGRE, J.]