

ISM

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

MISC. CIVIL APPLICATION NO. 85 OF 2020

Pranali Swapnil Kamble

....Applicant

V/s.

Swapnil Chandrakant Kamble

.....Respondent

Mr. Vaibhav Gaikwad for the applicant

Mr. Vijay K. Jha a/w Ansgre Carvalho for Respondent

CORAM : NITIN W. SAMBRE, J.

DATE: JULY 23, 2021.

P.C.:

1] This is an application seeking transfer of proceedings being Hindu Marriage Petition No. 27 of 2020 filed by respondent-husband on the file of Civil Judge Senior Division, Panvel to Civil Judge Senior Division, Karad.

2] The submissions of learned counsel for the applicant Mr. Gaikwad are, after matrimonial discord, out of marriage dated 13/12/2018 which was performed at Satara, applicant was forced to leave the house of the respondent. According to him, applicant has

initiated proceedings under the provisions of Protection of Women from Domestic Violence Act, 2005 which are pending adjudication on the file of Judicial Magistrate First Class, Karad.

3] In the aforesaid background, the submissions are, great hardship will be caused to the applicant as the applicant is custodian of a child, the distance between two places i.e. Panvel to Karad is about 300 Kms one way and as such it will be financially so also physically difficult for her to manage the proceedings at Panvel Court.

4] While opposing the claim, Shri. Jha, learned counsel appearing for the non-applicant would claim that provisions of Section 24 of Code of Civil Procedure, 1908 cannot be invoked unless it is demonstrated that something very palpable which might result in likelihood of injustice because of far distance or hardship is demonstrated. According to him, the law is well settled in the matter of two judgments viz. **Harvinder Kaur Vs. Harmander Singh Choudhry** [First Appeal No. 181 of 1981] and **Prakash Vs. State of Gujarat** [Special Criminal Application (Transfer) No. 8568 of 2017].

5] Mr. Jha would also urge that proceedings which are initiated principally for restitution of conjugal rights and having regard to relief claimed therein, there is no case for transfer under Section 24 of C.P.C.

6] Considered rival submissions.

7] It is not disputed that non-applicant is attending D.V. Act proceedings at Karad in Satara District which are initiated by the applicant.

8] Apart from above, the fact that applicant is custodian of a child is not disputed. Considering both way distance to be around 600 Kms, in my opinion, applicant will be required to travel over night to attend the proceedings. In that view of the matter, great hardship as is claimed is very much established by the applicant.

9] In that view of the matter, proceedings being Hindu Marriage

Petition No. 27 of 2020 pending on the file of Civil Judge Senior Division at Panvel initiated under Section 9 of the Hindu Marriage Act are ordered to be transferred to the file of Civil Judge Senior Division Karad.

10] For the convenience of the parties, it is further ordered that D.V. Act proceedings initiated by the applicant and the aforesaid proceedings of which transfer is ordered shall be posted on the same day. Application as such stands allowed in the above terms.

[NITIN W. SAMBRE, J.]