

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
MISC. CIVIL APPLICATION NO.125 OF 2020

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Dr. Sandeep Shekar Shetty,]
R/at, 902, Navdurga Society, Opp.]
Lakme, Govnadi Station Road,] ... Applicant
Chembur, Mumbai – 400 088.

Versus

Dr. Sarika Sandeep Shetty,]
Lastly R/at: B-1 05 Vanmali Society,]
Opp. Dukes Factory, V.K. Patil,]
Marg, Moti Baug, Chembur, Mumbai]
– 400 071.] ... Respondent

...

Mr. Aabad Ponda, senior counsel with Mr. Sandeep S. Shetty for
the applicant.

Ms. Kokila Kalra for the respondent.

...

CORAM : SMT. BHARATI DANGRE, J.

DATED : 08TH OCTOBER, 2021.

JUDGMENT:-

1. The applicant and the respondent were married as per
Hindu rites and customs on 08/10/2000. Since the marriage was

distraught and perturbed one, both the parties took recourse to the remedies available to them and the applicant filed a divorce petition being Petition No.A-1019 of 2017 before the Family Court at Bandra, Mumbai. The respondent-wife filed proceedings under the provisions of the Protection of Women from Domestic Violence Act, 2005 (**“the Domestic Violence Act”**) before the Metropolitan Magistrate, Kurla, in which an order has been passed against the applicant to pay maintenance to the respondent for maintaining the minor child. In the said proceedings, the applicant was directed to pay maintenance to the respondent also and this order was subject matter of challenge before this court.

In any case, I need not delve deep into the nature of dispute between the parties or the cause for the same.

2. Shorn of unnecessary details, I will turn to the prayers set out in the present miscellaneous civil application filed by the applicant, the husband. He is seeking transfer of case bearing No.115/DV/2017 filed by the respondent-wife in the Court of Metropolitan Magistrate, Kurla to the Family Court at Bandra, where the divorce petition filed by the husband being Petition No.A-1019 of 2017 is pending and the substantive prayer clause in the application, reads as under:

“(c) This Hon’ble Court may as per section 24 of the Civil Procedure Code r/w

Rule 6 of Chapter I of the Bombay Appellate Side Rules, 1960 a/w Article 227 of the Constitution of India be pleased to transfer the proceedings bearing CC No.115/DV/2017 pending before the Learned Magistrate 57th Court Kurla to Family Court no. 5 at Bandra, Mumbai wherein Petition bearing no.A1019 of 2017 is pending.

(d) This Hon'ble Court may in furtherance thereof may direct the Hon'ble Family Court no.5 at Bandra, Mumbai to try both these proceedings i.e. CC no.125/DV/2017 and Petition no.A1019 of 2017 to be tried/heard together and if required and if the circumstances aroused record common evidence in both this proceedings."

3. Heard Mr. Ponda, learned senior counsel for the applicant and Ms. Kalra, learned counsel appearing for the respondent.

4. Learned senior counsel would urge that the proceedings between the two parties can be expeditiously determined by the same court i.e. the Family Court, which is competent to pass orders under the provisions of the Domestic Violence Act and since there is commonality of parties and since one proceeding will have an impact on the other, in the interest of justice, the proceedings should be transferred to the Family Court at Bandra. The transfer is sought by invoking Section 24 of the Civil Procedure Code ("CPC") read with Rule 6 of Chapter I of the Bombay High Court (Appellate Side) Rules, 1960 and the

submission is that it is competent for this court to transfer any suits, appeals, criminal cases or other proceedings pending for trial or disposal in any civil court or criminal court subordinate to the High Court or over which the High Court has power of superintendence, to another court subordinate to or under the superintendence of the High Court, or to the High Court itself. The submission is that the proceedings which are pending before the learned Metropolitan Magistrate, Kurla are the proceedings over which the High Court has power of superintendence and, ends of justice could be better served if the proceedings are clubbed together and made over to the Family Court, Bandra, which is also competent to exercise the jurisdiction exercisable by the Magistrate of First Class for trying the proceedings under the Domestic Violence Act. His submission is that in view of the close link between the two proceedings and to avoid any conflict in decisions as well as to curtail the length of the proceedings by permitting the parties to record the common evidence in both the proceedings and to avoid multiplicity, the criminal case pending before the Metropolitan Magistrate, Kurla be transferred to the Family Court, Bandra.

5. Ms. Kalra, learned counsel for the respondent would urge that the conduct of the applicant will not justify the relief sought by him and an important question is raised by learned counsel for the respondent, which is to the effect that, if the proceedings were instituted by wife before the Metropolitan Magistrate,

Kurla in the year 2017, why is the application for transfer being moved in the year 2020. It is urged that in the Family Court, the proceedings have reached the stage of evidence and the stage at which the proceedings have reached, do not justify the transfer. Another submission advanced by learned counsel is that by transferring the proceedings to the Family Court, there would be a loss of right of appeal and this, in any case, should persuade the court to reject the request of transfer.

6. On perusal of the application and on hearing learned counsel for the parties, I do not deem it appropriate to touch the merits of the matter, but merely notice a fact that the parties are into a marital relationship since 2000 and a child is borne out of the wedlock. However, it appears that they shared an estranged relationship since 2015 and the proceedings are instituted by each of them in the year 2017 seeking respective relief.

7. The issue about the transfer of proceedings from a Magistrate Court to the Family Court is no more *res integra* and I had an opportunity to deal exhaustively with a similar issue in a Criminal Writ Petition No.4649 of 2015 (**Order dated 06/09/2018 in Sandip Mrinmoy Chakraboarty v. Reshita Sandip Chakrabarty & Anr.**) instituted before me, where the proceedings pending on the file of J.M.F.C., Pune, were sought to be transferred to the Family Court at Pune, where the petition for dissolution of marriage and custody of minor child is

pending. An application, which was moved under Section 24 of the C.P.C. was considered in the background of the scope of two enactments viz. the Family Courts Act, 1984 and the Domestic Violence Act, 2005. On comparison of two enactments, the former being an enactment to provide for establishment of the Family Courts with a view to promote conciliation, for securing speedy settlement of disputes relating to marriage and family affairs, it can be seen that Section 7 of the said Act sets out the jurisdiction of Family Courts and provides that subject to the other provisions of the Act, it adumbrates that the Family Court shall have the jurisdiction exercisable by any district court or any subordinate civil court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the explanation and be deemed, for the purposes of exercising such jurisdiction under such law, to be deemed to be a district court. Section 7 also permits the Family Court to exercise jurisdiction, which is exercisable by a Magistrate of the First Class under Chapter IX and such other jurisdictions conferred on it by any other enactment. This would definitely cover the jurisdiction exercisable by the Magistrate under the Domestic Violence Act as on perusal of sub-section (2) of Section 7, clause (a) contemplates the jurisdiction exercisable by the Magistrate of First Class under Chapter IX of the Cr.P.C. whereas, clause (2) contemplates such other jurisdiction as may be conferred on it by any other enactment. Section 20 of the said Act gives an overriding effect to the provisions of the said Act

notwithstanding anything inconsistent therewith contained in any law for the time being in force or in any instrument having effect by virtue of any law other than this Act. As against this, the special Act, which is enacted for protection of women from domestic violence and for ensuring the right guaranteed to them under the Constitution, is a self contained Code, which permits several reliefs to an ‘aggrieved woman’. Chapter IV of the Act sets out the relief that can be claimed and Section 26 is the special provision, which permits an aggrieved person to seek relief before the civil court, family court or criminal court and Section 26 reads thus:

“26. Relief in other suits and legal proceedings.—

(1) Any relief available under sections 18, 19, 20, 21 and 22 may also be sought in any legal proceeding, before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.

(2) Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court.

(3) In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be

bound to inform the Magistrate of the grant of such relief.”

Section 30 of the Domestic Violence Act, which is in the form of special act sets out that the provisions of said Act shall be in addition and not in derogation of the provisions of any other law, for the time being in force.

8. Taking an overall view of the two enactments, it has been held as under:

“14. A perusal of the proceeding involved in this lis would reveal that no doubt there are certain distinct reliefs claimed in two proceedings. It is not the case of the learned counsel for the petitioner to curb the progress of the proceedings or to curtail some of the reliefs, which are sought by the respondents. It is his submission that these two proceedings, in order to avoid decision which will adversely affect either of the parties, could be clubbed together and dealt with by the same Court and it is for the Family Court which is empowered to deal with the said proceedings in the manner which would serve the interest of justice and the interest of parties in a better manner. The prayer of the learned counsel for the petitioner is not to deprive the petitioner of any of the reliefs which she has sought in the Domestic Violence proceedings, but his only claim is that it can be decided before the Family Court effectively and since both the

proceedings are instituted by the wife, the Family Court may direct the parties to lead common evidence in support of the overlapping reliefs which are sought and it is always open for the Family Court to deal with the other issues independently.

15. I find sufficient substance in the said contention of the learned counsel for the petitioner and in the backdrop of the scheme of Enactments which has been discussed above, there is no iota of doubt in my mind that the reliefs sought before the learned Magistrate in the Domestic Violence proceedings can be effectively tried and granted by the Family Court. Further it is settled position of law that the Court which is competent to grant a final relief is also competent to grant an interim relief so as to protect the subject matter of the proceedings before it.”

In the wake of the aforesaid observations, the application was allowed.

9. On similar line, is another decision dated 10/12/2015 of this court in the case of **Minoti Subhash Anand v. Subhash Manoharlal Anand in Misc. Civil Application No.255 of 2015**, where learned single judge of this court (Hon’ble Justice R.D. Dhanuka) has granted the application, relying upon the decision of the Madras High Court and by recording that there is no inconsistency between the provisions of Section 24 of the CPC and Rule 6 of Chapter I of the Bombay High Court Appellate

Side Rules and the proceedings were transferred to the Family Court. As far as the apprehension expressed by learned counsel for the respondent that she will lose a remedy by way of appeal, is concerned, the same has been answered by another learned single Judge of this Court (Justice S.C. Gupte) by his order dated 15/11/2019 in **Misc. Civil Application No.64 of 2019 (Santosh Machindra Mulik v. Mohini Mithu Choudhari)**. The relevant portion of the said order reads thus:

“5. Learned Counsel for the Respondent further submits that transfer of the criminal proceeding curtails the right of the Respondent-wife to file an appeal, which she ordinarily would have had if the proceeding were to be decided by the criminal court. We are concerned in the present case essentially with the justice of the case in having the two matters heard together. On the one hand, we have a situation where two different courts would be required effectively to consider the same set of circumstances and could have arrived at two different conclusions or, even possibly, conflicting conclusions, and on the other hand, if this situation were to be avoided, and it appears to be imperative that it be avoided, one particular stage of challenge would be missed. In any event, since from the domestic violence proceeding that may be heard along with the matrimonial proceeding before the Family Court, an appeal would lie to this court, and in that sense, no party can be said to be losing his/her right of appeal, what is lost is a further right of revision. That, however, is no

ground to deny transfer of proceedings on the basis of the principle of justice noted above.”

10. In the light of the aforesaid position of law emerging from the orders referred to above and on a conjoint reading of the two special enactments, I have no hesitation in allowing the application by transferring the proceedings as prayed therein. This would ensure curtailment of the time consumed by the two Forums and also ensure consistency of the proceedings, since the contest is between the same parties. The inconsistency shall be thus avoided and the Family Court shall by clubbing the two proceedings permit common evidence to be lead, which would also avoid multiplicity.

The settled position of law and convenience of the parties, do not permit one to consider the plea of the applicant on the ground of his conduct, as sought to be canvased before me since, I must stress that justice can be better achieved, on the two proceedings, being on trial, by the same court, being the Family Court.

11. Another reason, why I deem it appropriate to transfer the proceedings is the evidence in the petition before the Family Court has not commenced and the transfer of the proceedings under the Domestic Violence Act to the Family Court, Bandra, will not in any way protract or delay the continuation of marriage petition, contested between the parties.

12. The miscellaneous civil application is allowed in terms of prayer clause (a). The proceedings stand transferred from the Metropolitan Magistrate, Kurla to the Family Court, Bandra at Mumbai and the Family Court shall club the proceedings for its expeditious disposal. Parties are at liberty to lead common evidence in the proceedings.

13. The Family Court, Bandra shall make all endeavours to dispose of the proceedings expeditiously.

[SMT. BHARATI DANGRE, J.]