

AGK

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
MISC. CIVIL APPLICATION NO. 163 OF 2021**

Dr. Nihal Dattatraya Devkar ...Applicant

Versus

Dr. Aishwarya Nihal Devkar ...Respondent

Mr. Tejas Hartalkar, for the Applicant.

Mr. Amol Jagtap, for the Respondent.

CORAM: Smt. Bharati Dangre, J.

DATED: 8th December 2021

P.C.:-

1. By the present Application filed by the Petitioner-husband, the transfer of Miscellaneous Application No. 3996 of 2019 filed by the Respondent-wife under the Domestic Violence Act, 2005 and pending in the Court of Judicial Magistrate First Class, Shivajinagar, Pune is sought to the Family Court at Pune, where the Respondent-wife has filed Divorce Petition No. 1406 of 2019.

The transfer is sought on the ground of avoiding conflicting orders passed by the respective Court, since the

Digitally
signed by
ATUL
GANESH
KULKARNI
Date:
2021.12.09
11:00:22
+0530

ATUL
GANESH
KULKARNI

contest is between the same parties.

2. Heard the learned Counsel for the Applicant and the learned Counsel for the Respondent.

3. The Application as filed by the Applicant is sought to be opposed by the Counsel for the Respondent on the ground that the Divorce Petition is filed five days after the DV proceedings are instituted by the wife. My attention is invited to an order passed in the DV proceedings on 17.12.2019 below Exhibit 10 where the learned Magistrate has restrained the Opponent from committing any act of domestic violence and this order is in the form of temporary restrain till final Application below Exhibit 10 is decided. The learned Counsel for the Respondent has placed before me the roznama of both the proceedings and on perusal of the same I can only observe that both the proceedings have not moved further from the time of its filing, though in the Family Court, on an application filed for access by the husband on 06.07.2020 the Family Court at Pune has partly allowed the application granting access of the child to the husband. This order is in existence since 06.07.2020 and parties allege breach of both the orders, i.e. the restrain order passed by the Magistrate and the access order passed by the Family Court.

4. The proceedings are being dragged from 2019 and it is

very apparent that each party is interested in prolonging the proceedings filed by the other and this I say on perusal of the order sheet of both the proceedings. Justice would be better rendered to the parties if the proceedings are transferred to one Court and the hearing shall be before the Family Court at Pune which can exercise the powers of the Judicial Magistrate First Class in the wake of Section 26 of the Domestic Violence Act, 2005 which permit the proceedings to be transferred to the Family Court. In this view, I am fortified by a reported judgment in the case of ***Sandip Mrinmoy Chakraboarty v Reshita Sandip Chakraboarty & Anr., (2018 (6) Mh.L.J. (Cri.) 499***), where I have exhaustively dealt with the provisions of the two enactments, i.e. Domestic Violence Act, 2005 and the Family Courts Act and held that the Family Court is competent to exercise the jurisdiction, which could be exercised by the Magistrate under the Domestic Violence Act, 2005, particularly in light of Section 26 of the said enactment.

5. In light of the aforesaid legal position being applied to the case in hand, I deem it appropriate to transfer the proceedings from the Court of Judicial Magistrate First Class, Shivajinagar, Pune to the Family Court at Pune where the Divorce Petition filed by the husband is pending.

6. Since both the proceedings are pending for more than two years, I deem it expedient to request the Judge of the

Family Court to culminate both the proceedings on or before 31.12.2022. Needless to state that both the parties will render their cooperation in concluding the proceedings.

At this stage, a request is made by the Counsel for the Respondent that the hearing of the maintenance application filed in the DV proceedings is scheduled before the Magistrate in the near future and his anxiety is merely because the proceedings are now transferred, the hearing of the said application shall not be postponed indefinitely. By requesting the Family Court at Pune to take up the application for maintenance with utmost promptitude and to be concluded on or before 31.12.2022, the interest of the Respondent can also be protected.

7. The Application is allowed in terms of prayer clause (a).
8. The Judicial Magistrate First Class, Shivajinagar, Pune shall forthwith transfer the proceedings of Criminal Miscellaneous Application No. 3996 of 2019 pending on its file to the Family Court at Pune.

(Smt. Bharati Dangre, J.)