

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

MISC.CIVIL APPLICATION NO.46 OF 2020

**ASHWINI KAILAS PATIL
VERSUS
SHIVAJIRAO ANANDRAO GAEKWAR**

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Advocate for Applicant : Mr. S. G. Ladda
Advocate for Respondent : Mr. S.P. Brahme i/b. Mr. Subodh P. Shah

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CORAM : MANGESH S. PATIL, J.

DATED : 01 JULY 2022

PER COURT :

This is an application under section 24 of the Code of Civil Procedure for transfer of the divorce proceeding initiated by the respondent against the applicant and pending on the file of the Family Court Bandra at Mumbai to Aurangabad.

2. I have heard the learned advocates of both the sides.
3. Learned advocate Mr. Ladda for the applicant submits that, after the couple got separated because of the matrimonial bickering, she has come back to her parental home at Aurangabad where she has lodged two other proceedings, one under the Protection of Women from Domestic Violence Act, 2005 and the other in the form of a F.I.R. under section 498A etc. of the Indian Penal Code both at Aurangabad. It would be inconvenient for her to defend

the divorce proceeding by commuting between Aurangabad and Mumbai and request for transfer.

4. The learned advocate for the respondent is opposing the application on the ground that this is not a fit case, where the discretion can be exercised by looking at the convenience of the applicant submits that she has designedly filed couple of proceedings at Aurangabad after the divorce proceeding was instituted in Mumbai. She is highly qualified who can travel all alone. She was Director of a company and has been staying in Pune. It is also contended that she comes from a well off family having political influence at Aurangabad and has moved this application to somehow see to it that the respondent comes down to Aurangabad.

5. Learned advocate Mr. Brahme submits that in the alternative the respondent would request that the matter be transferred to Pune so that it would be convenient for both the sides to attend the proceeding at Pune.

6. The applicant has also filed a rejoinder and denied that her place of residence is at Pune and that it belongs to her. She has also averred that even she has ceased to be the director of company.

7. Both the sides have relied upon various decisions.

8. True it is that the parties cannot be allowed to misuse the process of the court. However, it is also a matter of record that the parties belong to

well off families and consequently, there is no question of any financial constraints to either of the side to defend the proceedings wherever they are.

9. The fact remains that the applicant is a women which is considered to be a weaker section. That the fact that she has been staying in Aurangabad and not at Pune, which is specifically explained in the rejoinder cannot be questioned now.

10. Though the respondent has mentioned as to how influential is the applicant's parental side and contends that there is a risk to the respondent in coming down to Aurangabad, the contention is vague. Going by the contentions in the reply, pursuant to the crime registered against him he had already been to Aurangabad. No incident with particulars have been pleaded.

11. These are not the matters to be decided as if those are meant for deciding the rights. There are to be decided in the facts and circumstances. Suffice for the purpose to observe that it is trite that the courts should lean in favour of weaker section. A matrimonial proceeding which is pending in Mumbai is being sought to be transferred to Aurangabad. Irrespective of the financial condition and educational qualification of the applicant, it would be difficult for her to go to Mumbai to defend the divorce proceeding off and on.

12. Consequently, instead of making both the sides to commute between the places, in my considered view, it would be appropriate, taking

into consideration the balance of convenience that the application is allowed and the divorce proceeding is transferred to Aurangabad with a direction to all the courts taking up different matters between the parties at Aurangabad to list all these matters on the same date, as far as possible, so that even any possible inconvenience to the respondent could be avoided.

13. The application is allowed.

14. The proceeding bearing Marriage Petition No.A-1281 of 2019, pending in the Family Court Bandra at Mumbai is transferred to the Family Court at Aurangabad.

15. All the courts taking up different matters between the parties at Aurangabad shall, as far as possible, list all the matters on the same date.

16. Parties shall appear before the Family Court at Aurangabad on 30.07.2022.

(MANGESH S. PATIL, J.)

Tandale/-