

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

MISC.CIVIL APPLICATION NO.271 OF 2021

**VANITA VAIBHAV VYAVHARE
VERSUS
VAIBHAV CHANDRAKAND VYAVHARE AND OTHERS**

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Mr. Hemant Surve, Advocate for the applicant.
Mr. Shreyas Deshpande, Advocate holding for Mr. Sanjeev B.
Deshpande, Advocate for the respondents.

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CORAM : SANDIPKUMAR C. MORE, J.

DATED : 02.12.2022.

ORDER:-

1. Heard rival submissions. The applicant – wife is seeking transfer of Hindu Marriage Petition No.1002/2018 filed by respondent No.1 – husband for getting divorce, from the Court of learned Civil Judge (Senior Division), Pune to the Family Court at Jalna. The applicant – wife has also sought transfer of Cri.Misc. Appln. No. 4563/2018 filed by her under Section 12 of the Protection of Women from Domestic Violence Act, 2005, from the Court of learned Judicial Magistrate (First Class), Pune to the learned Family Court at Jalna.

2. It is contended by the applicant that initially she was residing and doing the job at Pune, but due to continuous ill-treatment at the hands of respondent No.1 and his family members, she was forced to leave the job on 15.11.2020 and

since then she had no other option but to reside at Jalna. According to her, while residing at Pune, she had lodged the aforesaid proceeding before the concerned Judicial Magistrate (First Class), Pune in respect of domestic violence. Further, she has contended that now it is very difficult for her to attend the dates of the aforesaid proceeding at Pune, as she is residing at Jalna i.e. around 275 kms away from Pune. Further, she is having responsibility of her minor son, aged about 8 years.

3. The learned Counsel for the applicant submits that besides the aforesaid proceeding, a criminal prosecution under Section 498-A of the Indian Penal Code is also pending against respondent No.1 and his family members at Jalna bearing R.C.C. No. 53/2017. Thus, the respondents are required to attend the dates of that proceeding, and therefore, considering the convenience, the aforesaid both proceedings can be transferred to the learned Family Court at Jalna. He relied on the following judgments :

- (i) **Sandip Mrinmoy Chakraboarty vs Reshita Sandip Chakrabarty and another (Cri.W.P. 4649 of 2015)**
- (ii) **Suwarna Nilesh Rode vs Nilesh Balkrishna Rode (Misc. Civil Application No. 237 of 2019)**
- (iii) **Ketaki Prathamesh Salekar vs Prathamesh Ashok Salekar (Misc. Civil Application No. 81 of 2020**

4. On the contrary, respondent No.1 – husband, by way of rejoinder affidavit, strongly opposed the application on the ground that the applicant had in fact chosen to settle at Pune and even after separation from him, the applicant used to reside at Pune independently in a flat the rent of which was being paid by him. He pointed out that the proceedings at Pune, which are sought to be transferred, are at advance stage of hearing and can be determined within 2 or 3 dates in case the applicant attends those dates. He also pointed out that his parents are suffering from ailment and required continuous medication, and therefore, if the proceedings are transferred at Jalna, then it would be difficult for him to attend the dates.

5. It is significant to note that though the proceedings at Pune are at advance stage and some interim orders are also passed in the D.V. proceedings, however, the distance between Pune and Jalna is more than 275 kms and the applicant needs to maintain her 8 years old son also since due to old age her parents cannot look after him. Further, the respondents are anyhow required to attend the dates of criminal prosecution bearing R.C.C. No. 53/2017 at Jalna, and therefore, by seeking convenient dates they can also attend the dates of the aforesaid proceedings after its transfer.

6. Learned Counsel for the respondents pointed out that the D.V. proceedings filed by applicant and the Marriage Petition filed by respondent No.1 are pending in different Courts. However, in the aforesaid judgments relied upon by the learned Counsel for the applicant, consistent view is taken by this Court that the proceedings under the Protection of Women from Domestic Violence Act, 2005 filed before the concerned Judicial Magistrate (First Class) can be conveniently heard by the Family Court itself, because the facts in the proceeding in the Family Court are normally identical to the facts of the D.V. proceedings. This Court, in Criminal Writ Petition No. 4649 of 2015 in the case of Sandip Mrinmoy Chakraboarty vs Reshita Sandip Chakraboarty (supra) has observed in para Nos. 13, 14 and 15 as follows :

“13. Coming to the present controversy which this Court is called upon to deal with viz. relief that is sought for transfer of proceedings pending on the file of the learned Judicial Magistrate First Class at Cantonment Court, Pune to the Family Court at Pune, the apprehension expressed by the learned counsel for the respondents that the Family Court is not clothed with the powers as the one which is conferred on the Magistrate under Section 23 of the Domestic Violence Act, 2005 is misconceived and since it is already noted above that the Family Court which acts as a Civil Court and since it is vested with all powers of Civil Court which includes specific

provision to pass interim orders, the said apprehension can be dispelled and it is to be noted that the Family Court is competent not only to deal with the application preferred under Section 12 and specifically in the light of the powers conferred by Section 26 of the Domestic Violence Act, 2005 the relief available under Section 18, 19, 20, 21 and 22 can be sought in proceeding before the Family Court and the Family Court being a Civil Court is empowered to exercise all the powers of the Civil Court which would include a power to grant interim and ex-parte orders.

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”.

7. Further, consistent views as that of the aforesaid observations are also taken in the subsequent judgments by this Court. Therefore, there cannot be any bar to transfer the proceedings under the provisions of Protection of Women from Domestic Violence Act, 2005 to the Family Court where the other proceedings arising out of similar facts are pending, especially in the light of Section 26 of the Protection of Women from Domestic Violence Act, 2005. Moreover, it has been settled that in transfer cases convenience of wife is paramount consideration. Therefore, considering all these aspects, the following order is passed.

ORDER

- (i) The application is hereby allowed.
- (ii) Hindu Marriage Petition No. 1002/2018 pending in the Court of learned Civil Judge, Senior Division, Pune alongwith Criminal Misc. Appl. No. 4563/2018 pending in the Court of learned Judicial Magistrate (First Class), Pune are hereby transferred to the learned Family Court at Jalna, for disposal according to law.
- (iii) The respondents are directed to appear before the learned Family Court at Jalna on 2nd January 2023.
- (iv) The application is accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)