

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO. 66 OF 2020

Vinaya Sagar Phatake

.. Applicant

Versus

Sagar Dilip Phatake

.. Respondent

.....
Mr. Pandit Kasar, Advocate for the Applicant.
None for Respondent.

.....

CORAM : MILIND N. JADHAV, J.

DATE : 25th November, 2022.

P.C.:

. Heard.

2. None appears for the Respondent.

3. Parties got married on 28.03.2016. Respondent – husband initiated proceedings for dissolution of marriage / divorce pending on the file of Civil Judge Senior Division, Pune of which transfer is sought by Applicant to Civil Judge Senior Division, Barshi. Applicant resides in Madha. Respondent is employed and earns a salary of Rs.45,000/- per month.

4. Perused the ground of hardship stated in paragraph No.8C, D, F, G, H, and J of the Application. There is one minor child son Aaradhya aged five years who is in the custody and care of Applicant. As Applicant – wife will be required to travel from Barshi to Pune to

attend the proceedings, it will cause prejudice and hardship to her. Though several attempts for effecting service of the Application has been made, remark show that Applicant is not residing at the address. Mr. Kasar submitted that Respondent in the meanwhile is prosecuting the proceedings before the Family Court, Pune. He further submitted that he is evading service of the present Application. Court notice was issued on 12.07.2021. Court record indicates that notice issued to Respondent is returned unserved with bailiff remark “not residing at given address”. Mr. Kasar has pointed out to the said address as being the same as given in the cause title of the divorce proceedings filed in Pune Court. Since then all attempts to effect service on Respondent have met with no result for the past 18 months. Application is filed in 2020. It needs to be decided.

5. It is well settled by a catena of judgments of the Supreme Court as well as this Court that the primary concern in such matters is the convenience of the wife.

6. The cardinal principle for exercise of power under Section 24 of CPC is that the ends of justice demand the transfer of the suit, appeal or other proceeding. In matrimonial matters, wherever the Courts are called upon to consider the plea of transfer, the Courts have to take into consideration the economic soundness of either of the parties, the social strata of the spouses and behavioural pattern, their standard of life antecedent to marriage and subsequent thereto and

circumstances of either of the parties in eking out their livelihood and under whose protective umbrella they are seeking their sustenance to life. Generally, it is the wife's convenience which must be looked at by the Courts, while deciding a transfer application and merits of the case need to be considered.

7. In the present case if the Applicant - wife is forced to go from Pune to Barshi, it would amount to denial of justice to her. It is settled principal of law that justice is not only to be done but it should also appear to have been done. Hence, to strike a balance between the parties with a view to do complete and substantial justice and proceeding on a holistic view of the matter, I am of the considered view that it would be just and expedient to transfer the divorce proceeding from Barshi to Pune.

8. In my opinion, ground of hardship has to be considered in favour of the Applicant, as one way distance between Pune and Barshi is 170 kilometers.

9. In view of the above, Application is allowed and disposed of in terms of prayer clause (a) which reads as under:-

“a. By order of this Hon'ble Court, Marriage Petition No.1177 of 2018 filed and pending on the Board of Learned Civil Judge Senior Division at Pune may be transferred to the board of Learned Civil Judge Senior Division Barshi at Barshi, District: Solapur.”

[MILIND N. JADHAV, J.]