

R.M. Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

MISC CIVIL APPLICATION NO. 299 OF 2022

Heena Azim Jamadar	.. Applicant
Versus	
Azim Riyazahmed Jamadar	.. Respondent

.....
Mr. Sarfaraj J. Shaikh i/by Ms. Chaitrali Deshmukh for Applicant
Mr. R.R. Patil for Respondent
.....

CORAM : MILIND N. JADHAV, J.

DATE : 25th November, 2022.

P.C.:

. Heard.

2. Respondent has not filed affidavit-in-reply.

3. Parties got married on 17.11.2019. Respondent – husband initiated proceedings for restitution of conjugal rights i.e. Marriage Petition No. A-41 of 2021 which is pending on the file of Family Court, Sangli of which transfer is sought by Applicant to Family Court, Kolhapur, where she resides. Applicant has filed suit for divorce being R.C.S. No. 795/2021 under the Muslim Marriage Act, 1939 before the Civil Judge Senior Division, Kolhapur which is pending. Applicant resides at Kagal, Kolhapur. Applicant is studying and her father is a tailor. She is entirely dependent on him whereas Respondent is having his own business and assisting his father in the legal profession.

4. Perused the ground of hardship is pressed in paragraph No. 3-C, D and E of the Application. In my opinion, ground of hardship has to be considered in favour of the Applicant.

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 Kolhapur to Sangli, 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 proceeding filed by Respondent-Husband from Sangli to Kolhapur.

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

“(b) that this Hon’ble Court be pleased to transfer the hearing of Hindu Marriage Petition No. A-41 of 2021 pending before Hon’ble Family Court, Sangli to the Family Court at Kolhapur or to the Court having similar jurisdiction to try and entertain the same.”

[MILIND N. JADHAV, J.]

RAVINDRA
MOHAN
AMBERKAR

Digitally
signed by
RAVINDRA
MOHAN
AMBERKAR
Date:
2022.11.30
10:39:49
+0530