

H. H. Sawant.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO.245 OF 2022

Radhika Nilesh Kulkarni

.. Applicant.

Versus

Nilesh Shriram Kulkarni

.. Respondent.

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- Mr. Anant Vadgaonkar i/b. Mr. Prasad B. Kulkarni, for Applicant.
 - None for Respondent.
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CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 02, 2022

P.C.:

- 1.** Heard.
- 2.** Though served, none appears for the Respondent.
- 3.** Parties got married on 29.10.2011. Respondent – husband initiated proceedings for dissolution of marriage / divorce and custody proceeding pending on the file of Family Court, Jalgaon of which transfer is sought by Applicant to Civil Judge, Senior Division, Vita, Sangli, where she resides.
- 4.** Perused grounds of hardship which are pressed in paragraph Nos.4 and 5 of the Application. There is one daughter aged 10 years who is in the custody and care of Applicant. As Applicant – wife will be required to travel from Vita, Sangli to Jalgaon to attend the proceedings, it will cause prejudice and hardship to her.
- 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 Vita, Sangli to Jalgaon , 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 Jalgaon to Vita, Sangli.

8. Since the contentions are not controverted, in my opinion, ground of hardship has to be considered in favour of the Applicant, as

one way distance between Vita, Sangli and Jalgaon is 550 kilometers.

9. As such, Application is allowed and disposed of in terms of prayer clauses (b) and (b)(i) which reads as under:-

“(b) This Hon’ble Court may further kindly be pleased after transfer of HMP No.A-50 of 2022 to the Civil Judge Senior Division, Vita, be clubbed and tried jointly alongwith the MP No. 118 of 2022 pending file of Civil Judge Senior Division, Vita.

(b)(i) This Hon’ble Court may kindly be pleased to transfer the proceedings of D-7 of 2022 pending file of Family Court, Jalgaon to CJSD, Vita.”

[MILIND N. JADHAV, J.]