

Pallavi

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

MISC. CIVIL APPLICATION NO.263 OF 2022

Pooja Himanshu Bhise	...Applicant
Versus	
Himanshu Anil Bhise	...Respondent

**WITH
CRIMINAL APPLICATION NO.49 OF 2022**

Pooja Himanshu Bhise	...Applicant
Versus	
Himanshu Anil Bhise and Anr.	...Respondents

Mr. Vaibhav P. Patankar a/w Mr. Sarvesh S. Deshpande
i/by Patankar & Associates, for the Applicant in both
matters.

Ms. Prajakta Tawade for the Respondent No.1.

Mr. A.R. Patil, APP for Respondent – State.

Mr. Himanshu Bhise, Respondent present.

CORAM: MADHAV J. JAMDAR, J.
DATE: NOVEMBER 15, 2022

P.C.:

1. Heard Mr. Vaibhav Patankar, learned counsel for the
Petitioner, Ms. Prajakta Tawade appearing for Respondent No.1
and Mr. A.R. Patil, APP for the Respondent - State.

2. The Petitioner has sought the following relief in MCA No.263
of 2022:

“(a) Marriage Petition ‘A’ No.1156 of 2017 pending before the Ld. Family Court, Bandra, Mumbai (C.R. No.4) be transferred to the Ld. Family Court, Thane to try, entertain & dispose of on its own merits & in accordance with law.”

3. In Criminal Application No.49 of 2022, the following relief is sought:

“(a) C.C. No.32/DV/2017 pending before 53rd Metropolitan Magistrate, Mulund, Mumbai (filed by applicant) be transferred to the Ld. Family Court, Thane to try, entertain & dispose of on its own merits & in accordance with law.”

4. It is admitted position that the Petitioner – wife is staying at Thane and the Respondent is staying at Mumbai. The marriage between the Petitioner and the Respondent No.1 was solemnized on 27th February 2016. The Respondent – husband filed Marriage Petition No.A-1156/2017 under the provisions of Section 13(ia) of the Hindu Marriage Act, 1955 in the Family Court, Bandra seeking divorce. The Petitioner – wife has filed CC No.32/DV/2017 under the provisions of section 12 of the Protection of Women from Domestic Violence Act, 2005 before the learned 53rd Court of Metropolitan Magistrate, Mumbai.

5. It is mentioned in the Petition that the Petitioner is carrying on business in Thane and that due to heavy financial burden she has to look after all the aspects of the business personally and

therefore, she will not be able to travel to Mumbai.

6. Mr. Patankar, learned Advocate appearing for the Petitioner relied on the judgment dated 6th September 2018 passed by this Court in Criminal Writ Petition No.4649 of 2015 to support the contention that even the proceedings under the Domestic Violence Act, 2005 can be transferred to the Family Court. He particularly relied on paragraphs 12 and 13 of the said judgment which read as under :

“12. On having bird's eye view of the two Enactments, it is apparent that the two Enactments provide for overriding remedies and reliefs. The forum of Family Court established under Section 3 of the Family Courts Act, 1984 is competent to exercise all the jurisdiction exercisable by any district Court or any subordinate civil Court under any law for the time being in force in respect of suits and proceedings referred to in the explanation appended to Section 7 and for the purpose of exercising such jurisdiction under such law, is deemed to be a district Court or, as the case may be, subordinate civil Court for the area to which the jurisdiction of Family Court extends. The suits and proceedings amenable the jurisdiction of the Family Court are the suits and proceedings between the parties to a marriage for a decree of nullity, or for restitution of conjugal rights or for judicial separation

or dissolution of marriage. The Family Court would also exercise its jurisdiction over the property of the parties to a marriage, injunction for circumstances arising out of marital relationship, declaration as to legitimacy of any person, proceedings for maintenance, guardianship, custody of children, access of children etc. The Family Court thus exercises the powers of a civil Court and by virtue of Section 10 of the said Act, it is deemed to be a civil Court and has all the powers of such a Court. By sub-section (1) of Section 10 of the Family Courts Act, 1984, the provisions of the Code of Civil Procedure is made applicable to the suits and proceedings before the Family Court except the proceedings under Chapter IX of the Criminal Procedure Code, 1973, which continue to be governed by the provisions of Code of Criminal Procedure, 1973.

As far as the conduct of proceedings under the Domestic Violence Act, 2005 is concerned, the proceedings are initiated on an application being preferred by an aggrieved person or a protection officer or any other person on behalf of the aggrieved person seeking various types of reliefs which the Magistrate is competent to grant under Chapter IX. Section 28 prescribes that all the proceedings under Section 12, 18, 19, 20, 21, 22 and 23 are governed by the Code of Criminal Procedure, 1973. It is, however, permissible for the Court to lay down its own procedure for

disposal of an application under Section 12 or under sub-section 2 of Section 23. Since the Code of Criminal Procedure do not contain any provision to grant ex-parte and interim orders, the legislature deemed it fit and expedient to introduce Section 23 and confer the Magistrate with the specific power to pass such interim order as he deems fit and proper. The Family Court which exercises the jurisdiction of a Civil Court and which is deemed to be a Civil Court, would exercise all the powers of a Civil Court and it is needless to say that it would include the power to grant injunction or any interim orders of any nature by virtue of Order XXXIX Rules 1 and 2. It is also empowered to pass interlocutory orders so as to protect the subject matter of the proceedings. Thus, the Family Court which is deemed to be a civil Court possesses all the powers of a civil Court including its inherent power to grant interim relief, and therefore, a Section analogous to Section 23 of the Domestic Violence Act, 2005 do not find place in the Family Courts Act, 1984.

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.”

Thus, there is no impediment to transfer the proceedings under Domestic Violence Act, 2005 to the Family Court.

7. Ms. Prajakta Tawade, learned counsel appearing for the Respondent submitted that the Respondent is present in Court and he has no objection if the aforesaid both proceedings are transferred to Family Court at Thane. She states that the Respondent will file short affidavit giving his consent to the transfer of the proceedings within a period of one week from

today.

8. In view of this, Misc. Civil Application No.263 of 2022 is allowed in terms of prayer clause (a).

9. Criminal Application No.49 of 2022 is allowed in terms of prayer clause (a).

10. Both the aforesaid proceedings on transfer to the Family Court, Thane be clubbed together and disposed of in accordance with law.

11. Both the parties to remain present before the learned Principal Judge, Family Court, Thane on 17th December 2022 at 11.00 am. The parties to produce copy of this order before the learned Principal Judge, Family Court, Thane.

12. Misc. Civil Application No.263 of 2022 and Criminal Application No.49 of 2022 are disposed of in above terms with no order as to costs.

(MADHAV J. JAMDAR, J.)

Digitally signed
by PALLAVI
MAHENDRA
WARGAONKAR
Date:
2022.11.16
19:20:45
+0530