

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO. 198 OF 2022

Shalaka Naimesh Dhamale & Ors.

.. Applicants

Versus

Naimesh Bapu Dhamale

.. Respondent

-
- Mr. Jitendra M. Pathade for Applicants
 - Mr. Deepak C. Natu i/by N. Deepak & Co for Respondent
-

CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 02, 2022

P.C.:

- 1.** Heard Mr. Pathade, learned Advocate for Applicants and Mr. Natu, learned Advocate for Respondent.
- 2.** Perused the Application. This is an Application filed under Section 24 of the Code of Civil Procedure, 1908 by the Applicants.
- 3.** Parties got married on 27.03.2014. Respondent–husband initiated proceedings for getting custody of child Master Omkar under Guardians and Wards Act, 1890 which is pending before the learned District and Additional Sessions Judge, Raigad at Panvel. So also Respondent initiated proceedings for dissolution of marriage being H.M.P. No. 537 of 2019 which is pending before the learned Civil Judge Senior Division at Panvel. By filing the present Application, Applicant has sought transfer of both the proceedings to District Judge, Alibag where she resides.

4. Perused the grounds of hardship which are pressed in paragraph Nos. 10A, B, and C of the Application. There is one minor son aged seven years who is in the custody and care of Applicant. As Applicant – wife will be required to travel from Alibag to Panvel to attend the proceedings, it will cause prejudice and hardship to her.

5. Though affidavit-in-rely has not been filed by Respondent-husband, submissions and objections made on his behalf are noted. Learned Advocate for the Respondent has submitted that that Respondent is working as a Technician. That the distance between Alibaug to Panvel is only 50 kms. Hence, the Application be rejected.

6. 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.

7. 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.

8. In the present case if the Applicant - wife is forced to go from Alibaug to Panvel, 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 proceedings filed by Respondent-Husband from Panvel to Alibaug.

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

“(a) The proceeding of the Civil Misc. Application No. 315 of 2019 for getting custody of Master Omkar Naimesh Dhamale under Sections 7, 8, 9, 10, 11, 12, 13, 14, 16 and 17 of the Guardians and Wards Act, 1890 filed before learned District and Additional Sessions Judge, Raigad at Panvel be transferred to learned District and Additional Sessions Judge at Alibag and the proceedings of the H.M.P. No. 537 of 2019 for dissolution of marriage under Section 13(1)(i)(i-a)(i-b), (iii) Explanation (a)(b) (1-A)(i) of the Hindu Marriage Act filed before learned Additional Civil Judge Senior Division, Panvel be transferred to learned Civil Judge Senior Division, Alibag.”

[MILIND N. JADHAV, J.]

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