

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO. 151 OF 2022

Natasha Aditya Nikam .. Applicant
Versus
Aditya Dilip Nikam .. Respondent

-
- Mr. Aditya Andhorikar for Applicant
 - Mr. Himanshu Nagarkar a/w Ms. Kajal Savjani for Respondent
-

CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 02, 2022

P.C.:

- 1.** Heard learned Advocates for the respective parties.
- 2.** Parties got married on 30.12.2014. Respondent – husband initiated proceedings for divorce pending on the file of Family Court, Nashik of which transfer is sought by Applicant to Family Court, Thane, where she resides with her parents and minor son.
- 3.** Perused grounds of hardship which are pressed in paragraph No. 7 of the Application. There is one minor son aged 5 years who is in the custody and care of Applicant. As Applicant – wife will be required to travel from Thane to Pune to attend the proceedings, it will cause prejudice and hardship to her.
- 4.** Respondent has filed affidavit-in-reply dated 27.07.2022 and controverted the submissions raised by the Applicant in her Application. Respondent submitted that he is required to work from home in Nashik. That he has to look after his ailing old parents and

he also suffers from some ailments. In view thereof, he prayed for dismissal of the Application.

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 Thane to Nashik, 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 Nashik to Thane..

8. In view of the above discussion, in my opinion, ground of hardship has to be considered in favour of the Applicant, as one way distance between Thane and Nashik is 150 kilometers.

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

“(a) That this Hon’ble court be pleased to transfer Marriage Petition NO. A-51/2022 from the file of Ld. Principal Judge Family Court, Nashik to Ld. Principal Judge, Family Court Thane.”

[MILIND N. JADHAV, J.]

RAVINDRA
MOHAN
AMBERKAR

Digitally
signed by
RAVINDRA
MOHAN
AMBERKAR
Date:
2022.12.03
15:12:44
+0530