

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO.192 OF 2022

Rupali Ramesh Yadav

.. Applicant.

Versus

Ramesh Ramchandra Yadav

.. Respondent.

.....

- Mr. Akshay Kulkarni, for Applicant.
- Mr. Nitin Babgonda Patil, for Respondent.

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CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 02, 2022

P.C.:

1. Heard Mr. Kulkarni, learned Advocate for the Applicant and Mr. Patil, learned Advocate for the Respondent at length. Perused the Application. This is an Application filed under Section 24 of the Code of Civil Procedure, 1908 by the Applicant – wife.

2. Parties got married on 24.11.2004. Respondent – husband initiated proceedings for dissolution of marriage / divorce pending on the file of Civil Judge Senior Division, Panvel of which transfer is sought by Applicant to Civil Judge Senior Division, Sangli, where she resides at Tasgaon with her parents. The distance between Sangli and Tasgaon is 25 to 30 kilometers.

3. Perused grounds of hardship which are pressed in paragraph Nos.11 to 14 of the Application. There is one daughter aged 15 years who is in the custody and care of her maternal aunt in Thane. As Applicant – wife will be required to travel from Sangli to Panvel to

attend the proceedings, it will cause prejudice and hardship to her.

4. Respondent has not filed affidavit-in-reply. However, learned Advocate for the respondent submitted that respondent is suffering from leg problem and various diseases. Learned Advocate sought time to file affidavit-in-reply. Record indicates that Respondent was served in April 2022 and has not filed his Reply till date. Objections of Respondent have been considered.

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 Sangli 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 proceeding filed by Respondent-Husband from Panvel to 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 Sangli and Panvel is 350 kilometers.

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

“(b) To transfer the Hindu Marriage Petition No. 297 of 2020 filed by the Respondent and pending before the Ld. Civil Judge, Senior Division, Panvel for decree of divorce under Section 13 (1) (ia) of the Hindu Marriage Act, 1955 to the competent court at Sangli.”

[MILIND N. JADHAV, J.]

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