

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO. 248 OF 2022

Aparna Rahul Jadhav

.. Applicant

Versus

Rahul Bhaskar Jadhav & Ors.

.. Respondents

-
- Mr. Pavan Patil for Applicant
 - Mr. Ramdas Hake Patil for Respondents
-

CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 02, 2022

P.C.:

- 1.** Heard Mr. Pavan Patil, learned Advocate for Applicant and Mr. Hake Patil, 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 Applicant-wife.
- 3.** Parties got married on 21.05.2010. After the marriage, Respondent-husband started harassing and torturing the Applicant due to which Applicant has filed Ncs on 09.05.2005 at Mumbra Police Station and Badlapur (East) Police Station. Thereafter, on 29.12.2018, Applicant filed proceedings under Domestic Violence against Respondents which is pending before Judicial Magistrate First Class, Ulhasnagar, District Thane.
- 4.** Respondent-husband initiated proceedings for dissolution of marriage which is pending on the file of 4th Joint Civil Judge Senior

Division, Kalyan, District Thane.

5. Applicant has sought the above proceedings to be transferred to learned Civil Judge Senior Division, Ahmedpur, District Latur as she resides at Shirur, Tajbad which is at a distance of 10 kms from Ahmedpur.

6. Perused grounds of hardship which are pressed in paragraph Nos. 3(A) to (H) of the Application. There are two daughters aged 7 years and 5 years who are in the custody and care of Applicant. Applicant has no source of Income.

7. Respondent-husband has filed affidavit-in-reply dated 12.06.2022. Respondent has submitted that he apprehends that he will be physically abused and that it would be very difficult for his aged parents to travel. However, he submitted no objection for transfer of both the proceedings at Family Court, Latur instead of Ahmedpur as from the travel point of view, it would be convenient for the Respondents to attend the same.

8. 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.

9. 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.

10. In the present case if the Applicant - wife is forced to go from Latur to Kalyan, 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 both the aforestated proceedings from Kalyan Court and Ulhasnagar Court to Family Court, Latur.

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

“(a) Rule be issued, record and proceedings of PWDA Application No. 371 of 2018 (DV Application) pending before the Joint Civil Judge, Jr. Division, JMFC, Ulhasnagar, District Thane filed by her on 29.12.2018 under Section 12 of the Protection of Women from Domestic Violence Act, 2005 as well as Marriage Petition No. 392 of 2021 (Marriage Petition) pending before the 4th Joint Civil Judge, Senior Division, Kalyan, District Thane filed on 18.02.2021 by Respondent No. 1 husband against the Applicant wife under

Section 13(1)(i-a) of the Hindu Marriage Act, 1955 thereby seeking decree of divorce dissolving the marriage solemnized on 21.05.2010 be called for and after examining the case of the Applicant, this Hon'ble Court be pleased to transfer both the proceedings to the learned Family Court, Latur."

[MILIND N. JADHAV, J.]

RAVINDRA
MOHAN
AMBERKAR

Digitally signed
by RAVINDRA
MOHAN
AMBERKAR
Date:
2022.12.03
15:13:59
+0530