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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO. 422 OF 2022

Mrs. Jyoti Vinayak Kadam

.. Applicant

Versus

Mr. Vinayak Anant Kadam and Ors.

.. Respondents

.....

- Mr. Saeed Akhtar, Advocate for Applicant.
- Mr. Jitendra M. Pathade, Advocate for Respondents.

.....

CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 02, 2022

P.C.:

1. Heard Mr. Akhtar, learned Advocate appearing for the Applicant and Mr. Pathade, learned Advocate appearing for the Respondents. This is an Application filed under Section 24 of the Code of Civil Procedure, 1908 by the Applicant – wife.

2. Leave to amend is granted. Amendment to be carried out forthwith. Re-verification stands dispensed with. The stamp number of the proceedings in Family Court, Bandra as stated in the prayer clauses is allowed to be changed to the final number i.e. A-758 assigned by the Court.

3. Parties got married on 27.01.2010. Applicant - wife has filed DV proceeding pending on the file of 62nd Court, Bhoiwada, Dadar of which transfer is sought by Applicant to Family Court No.5, Bandra. Applicant has filed divorce proceedings before Family Court, Bandra which is pending. Respondent No.1 is serving in the Police Department at Mumbai.

4. Perused grounds of hardship which are pressed in paragraph Nos.11 to 15 of the Application. There is one minor son aged 12 years who is in the custody and care of Applicant.

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. Mr. Pathade learned Advocate for Respondents has appeared and requested for time to file reply. He submitted that he received intimation from Respondent to appear in the matter. However, he was unable to submit his objections as he had no further instructions given to him by Respondents.

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. 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 Dadar to Family Court, Bandra.

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 order to transfer the proceedings bearing no. CC/192/DV/2019 pending at the file of the Ld. Metropolitan Magistrate, 62nd Court, Bhoiwada, Dadar to Hon'ble Family Court No.5, Bandra wherein petition no.758 of 2022 is pending under section 24 of the Code of Civil Procedure read with rule 6, chapter I of Bombay High Court Appellate Side rules 1960 read with Article 227 of the Constitution.”

[MILIND N. JADHAV, J.]

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