

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO. 339 OF 2022

Meenakshi Chetan Makwana .. Applicant
Versus
Chetan Harshadrai Makwana .. Respondent

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- Mr. Chandrashekhar V. Yadav for Applicant
 - None for Respondent.

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CORAM : MILIND N. JADHAV, J.
DATE : DECEMBER 02, 2022

P.C.:

1. Heard Mr. Yadav, learned Advocate for Applicant.
2. Though served, none appears for the Respondent. Affidavit of service dated 02.12.2022 is taken on record. It indicates that Respondent-husband has been served on 30.11.2022.
3. Perused the Application. This is an Application filed under Section 24 of the Code of Civil Procedure, 1908 by the Applicant-wife.
4. Perusal of record reveals that the Divorce Petition filed by Respondent-Husband at earlier point of time has been dismissed. Thereafter, Respondent filed proceedings being P.A. No. 1367 of 2021 at Family Court, Nagpur for restitution of conjugal rights. By the present Application, Applicant seeks transfer of the said proceedings to Family Court, Bandra.
5. Perusal of prayer clause (a) of the Application reveals that there are several execution proceedings which are pending before the

Family Court, Bandra. Learned Advocate for Petitioner submitted that as on date, Respondent is in arrears of maintenance to the tune of Rs. 24 Lacs (approx.) which has been granted by the learned Family Court, Bandra.

6. Perused the grounds of hardship which are pressed in paragraph Nos. 3 to 13 of the Application. Applicant is residing along with her parents at Borivali, Mumbai. As Applicant – wife will be required to travel from Mumbai to Nagpur to attend the proceedings, it will cause prejudice and hardship to her.

7. 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.

8. 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.

9. In the present case if the Applicant - wife is forced to go from Mumbai to Nagpur, 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 Nagpur to Mumbai..

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

“(a) That P.A. NO. 1367/2021 pending before the Hon’ble Family Court, Nagpur, Maharashtra may kindly be transferred to the Hon’ble Family Court at Bandra, Mumbai and be tagged with Execution Application No. ER/263/2017, Execution Application No. ER/121/2018, Execution Application No. ER/25/2019, Execution Application No. ER/281/2019 and Execution Application No. ER/61/2021 and Misc. Application No. 19 of 2019.”

[MILIND N. JADHAV, J.]

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