

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO. 343 OF 2022

Sunita A. Bisht .. Applicant
Versus
Devendrasingh B. Rawat .. Respondent

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- Ms. Kanchan Talreja a/w Mr. Prashant Mairale Advocates for Applicant
 - Mr. Shanu @ Sanjay T. Raikar Advocate for Respondent
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CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 02, 2022

P.C.:

- 1.** Heard Ms. Talreja, learned Advocate for Applicant and Mr. Raikar, learned Advocate for Respondent at length.
- 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 22.01.2019. After some time, Respondent-husband and his family members started harassing Applicant due to which she was forced to leave her matrimonial house.
- 4.** Respondent – husband initiated proceedings for dissolution of marriage which is pending on the file of Civil Judge Senior Division, Thane of which transfer is sought by Applicant to Family Court, Bandra as she resides at Wadala with her parents.
- 5.** Applicant is a nurse working in Government T.B. Hospital, Sewree. Applicant submitted that she would have to take a full day

leave to attend the Court proceedings at Thane whereas she can attend the proceedings at Bandra and avoid taking leave.

6. Perused grounds of hardship which are pressed in paragraph Nos. 24 to 28 of the Application. As Applicant – wife will be required to travel from Wadala to Thane to attend the proceedings, it will cause prejudice and hardship to her as expressed by her.

7. Respondent has filed affidavit-in-reply dated 29.11.2022, *inter alia*, contending that the Applicant has not placed on record any document or proof regarding her duty hours in respect of her employment as nurse in the hospital. That the Applicant though stays with her parents, she has two brothers who can take care of them. That the Applicant would not be required to attend each and every date of hearing in Thane Court as she would be represented by an Advocate and that the Respondent is willing to co-operate with the Applicant as per her convenience in attending the Court proceedings at Thane. Respondent has further submitted that he works in the Service Industry and resides in Mira Road and travelling from Mira Road to Thane by local train would be inconvenient to him. Another reason cited by Respondent is that the Thane Family Court functions more smoothly and regularly compared to Family Court, Bandra.

7.1. Objections raised by Respondent have received due consideration of the Court.

7.2. Advocate for Respondent has placed reliance upon

unreported order of this Court passed on 11.03.2022 in the case of **Avantika Ashok Khanvilkar Vs. Ashok Sadashiv Khanvilkar¹**, and contended that the jurisdiction of this Court to transfer proceedings under Section 24 of CPC is to be exercised sparingly. Perusal of the said order, however, does not give adequate facts with respect to the employment of the Applicant therein and therefore, the said decision is clearly distinguishable and cannot be applied *ispo facto* to the facts of the present case as contended by learned Advocate for Respondent.

7.3. Next learned Advocate for Respondent has relied upon the decision of the Supreme Court in the case of **Anindita Das Vs. Srijit Das²** and contended that the decision has held that Court should not show leniency to ladies as it has been found that a large number of transfer petitions are filed by women taking advantage of the leniency shown by the Court. He submitted that observations made by the Supreme Court on the above aspect be applied to the present case. Perusal of the said decision clearly shows that save and except one particular ground pertaining to ill-health of the Applicant therein, no other particulars or grounds have been stated. In the present case, particulars of employment of the Applicant are undisputed and admitted by the Respondent. It is not denied that Respondent is working as nurse in the Government T. B. Hospital at Sewree.

7.4. Next learned Advocate for Respondent has relied upon a

1 Misc. Civil Application No. 337 of 2019 [Coram : Smt. Bharati Dangre, J.]

2 Order dated 29.08.2005 in Transfer Petition (Civil) No. 191 of 2005

decision of the Supreme Court in the case of **Preeti Sharma Vs. Manjit Sharma**³ wherein the transfer petition came to be dismissed as Court held that Respondent-husband was ready and willing to pay the expenses for travel and stay to the Applicant - wife and since the wife was an unemployed lady, it did not mean that she could not travel alone on her own. Perusal of the said order once again reveals that no specific particulars and details of the facts in that case have been stated in the order so as to apply the ratio of that case to the facts of the present case as contended by learned Advocate for Respondent.

7.5. That all the above three decisions referred to and relied upon by learned Advocate for Respondent are clearly distinguishable on facts. The facts of the present case are entirely different.

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

³ Order dated 29.04.2005 in Transfer Petition (Civil) Nos. 117-118 of 2004

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 Wadala to Thane, 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 Thane to Bandra.

11. At this stage, the relevant observations made by the Supreme Court in para No.14 of its judgment in *Kulwinder Kaur alias Kulwinder Gurcharan Singh Vs. Kandi Friends Education Trust and others*,⁴ can be gainfully followed in the present case. Paragraph No.14 reads as under:-

“Although the discretionary power of transfer of cases cannot be imprisoned within a strait-jacket of any cast-iron formula unanimously applicable to all situations, it cannot be gainsaid that the power to transfer a case must be exercised with due care, caution and circumspection. Reading Sections 24 and 25 of the Code together and keeping in view various judicial pronouncements, certain broad propositions as to what may constitute a ground for transfer have been laid down by Courts.

4 AIR 2008 SC 1333

They are balance of convenience or inconvenience to plaintiff or defendant or witnesses; convenience or inconvenience of a particular place of trial having regard to the nature of evidence on the points involved in the suit; issues raised by the parties; reasonable apprehension in the mind of the litigant that he might not get justice in the court in which the suit is pending; important questions of law involved or a considerable section of public interested in the litigation; interest of justice demanding for transfer of suit, appeal or other proceeding, etc. Above are some of the instances which are germane in considering the question of transfer of a suit, appeal or other proceeding. They are, however, illustrative in nature and by no means be treated as exhaustive. If on the above or other relevant considerations, the Court feels that the plaintiff or the defendant is not likely to have a fair trial in the Court from which he seeks to transfer a case, it is not only the power, but the duty of the Court to make such order?"

12. In view of the above discussion and findings, I am not inclined to accept the submissions of Respondent and the same are rejected. Application is allowed and disposed of in terms of prayer clause (a) which reads as under:-

“(a) Transfer the aforesaid matrimonial case and proceedings under Section 13 (1)(i)(a) of the Hindu Marriage Act, titled Mr. Devendra Singh B. Rawat Vs. Mrs. Sunita Bisht bearing Marriage Petition No. 29 of 2021 pending before the learned Civil Judge, Senior Division, Thane to the learned Principal Judge, Family Court, Bandra, both of which are within the jurisdiction of this Hon’ble Court and / or any appropriate Court in Thane that this Hon’ble Court may deem fit.”

[MILIND N. JADHAV, J.]

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