

R.M. Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO. 405 OF 2022

Rajani Amit Chautala	.. Applicant
Versus	
Amit Bakelal Chautala	.. Respondent
.....	
Mr. Sachin S. Padaye for Applicant	
None for Respondent	
.....	

CORAM : MILIND N. JADHAV, J.

DATE : 25th November, 2022.

P.C.:

. Heard.

2. Perused order dated 21.11.2022. Affidavit of service dated 23.11.2022 filed in the Registry.

3. Though served, none appears for the Respondent.

4. Parties got married on 09.12.2019. Respondent – husband initiated proceedings for restitution of conjugal rights pending on the file of Civil Judge Senior Division, Kalyan of which transfer is sought by Applicant to Family Court, Nashik, where she resides with her parents. Respondent is employed in a hospital in Mumbai and draws a monthly salary of Rs. 30,000/-. Applicant is unemployed. Domestic violence Act proceedings are pending at Nashik. Further Maintenance Application under Section 125(1) of Cr.P.C. is also pending at Nashik.

5. Perused the grounds of hardship which are pressed in paragraph Nos. 4A, C, D, E & F of the Application. As Applicant – wife will be required to travel from Nashik to Kalyan to attend the proceedings, it will cause prejudice and hardship to her.

6. 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.

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. In the present case if the Applicant - wife is forced to go from Nashik 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 the proceeding filed by Respondent-Husband from Kalyan to Nashik.

9. In my opinion, ground of hardship has to be considered in favour of the Applicant, as one way distance between Nashik and Kalyan is 150 kilometers.

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

“(b) Pass an appropriate order directing the transfer of Marriage Petition No. 1366 of 2021 pending before the Jt. Civil Judge, Senior Division, Kalyan, District Thane to the Ld. Family Court, Nashik at Nashik.”

[MILIND N. JADHAV, J.]