

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO. 463 OF 2022

Trupti Maheshkumar Borse

.. Applicant

Versus

Maheshkumar Vijaykumar Borse

.. Respondent

-
- Mr. Manoj Kondekar a/w. Mr. Avinash Gaikwad, Advocates for the Applicant.
 - None for Respondent.
-

CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 02, 2022

P.C.:

1. Heard Mr. Kondekar, learned Advocate appearing for Applicant.

2. Though served, none appears for the Respondent. Perused the Application. This is an Application filed under Section 24 of the Code of Civil Procedure, 1908 by the Applicant – wife. Affidavit of service dated 30.11.2022 is taken on record. Perusal of Affidavit of service indicates that the service by post has not been effected however service by email and whatsapp has been effected. The annexure to the Affidavit of service clearly confirms effect of service of the present Application on the Respondent.

3. Parties got married on 29.04.2013. Applicant is employed as a Clerk in BARC, Trombay, Mumbai and resides in Trombay. Respondent is working in Reliance Industries Limited at Village Patas,

Tal. Daund, Pune. Respondent has filed Petition for restitution of conjugal rights in Baramati Court. Applicant seeks transfer of the said Petition to Family Court, Bandra. Applicant has filed divorce Petition prior to the institution of the restitution proceeding in the Family Court, Bandra.

4. Perused grounds of hardship which are pressed in paragraph Nos.(i) to (xiii) of the Application. There is one minor daughter aged 7 years who is in the custody and care of Applicant. As Applicant – wife will be required to travel from Mumbai to Baramati to attend the proceedings, it will cause prejudice and hardship to her.

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. 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.

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

8. Since the contentions are not controverted, in my opinion, ground of hardship has to be considered in favour of the Applicant, as one way distance between Mumbai and Baramati is 263 kilometers.

9. As such, Application is allowed and disposed of in terms of prayer clause (a) which reads as under:-

“(a) This Hon’ble Court be pleased to transfer the case i.e. H.M.P. No.65 of 2022 filed by the Respondent before Civil Judge Senior Division, Baramati, Dist. Pune to the Family Court at Bandra Mumbai.”

[MILIND N. JADHAV, J.]

Digitally signed by
AJAY TRAMBAK
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Date: 2022.12.03
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