

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
MISC. CIVIL APPLICATION NO. 231 OF 2021

Nishigandha Prithviraj Mohite

.. Applicant

Versus

Pruthviraj Vishnu Mohite

.. Respondent

.....

- Mr. Rupesh A. Zade, Advocate for Applicant.
- None for Respondent.

.....

CORAM : MILIND N. JADHAV, J.

DATE : NOVEMBER 29, 2022.

P.C.:

1. Heard.

2. Though served, none appears for the Respondent.

3. Parties got married on 24.05.2019. Respondent – husband initiated proceedings for dissolution of marriage / divorce pending on the file of Civil Judge Senior Division, Kalyan of which transfer is sought by Applicant to Civil Judge Senior Division, Baramati where she resides with her parents. At present she is working in Pune as a Software Engineer.

4. Perused the ground of hardship stated in paragraph No.6/A, B, C and D of the Application. As Applicant – wife will be required to travel from Baramati to Kalyan 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 Baramati 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 divorce proceeding from Kalyan to Baramati.

8. In my opinion, ground of hardship has to be considered in favour of the Applicant, as one way distance between Baramati and Kalyan is 200 kilometers.

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

“a) This Hon’ble Court may please to transfer the HMP No.1134 of 2021, which is filed by the respondent herein in the court of learned Ld. Civil Judge Senior Division, Kalyan under Section 13(1)(ia) of the Hindu Marriage Act, 1955, to the learned Civil Judge Senior Division, Baramati.”

[MILIND N. JADHAV, J.]

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