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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO. 239 OF 2021

Poonam Vivek Patil

.. Applicant

Versus

Vivek Bhaulal Patil

.. Respondent

-
- Mr. Rohan D. Kaiche, Advocate for Applicant.
 - None for Respondent.

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CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 02, 2022

P.C.:

1. Heard Mr. Rohan Kaiche, learned Advocate appearing for Applicant – wife. Perused the Application. This is an Application filed under Section 24 of the Code of Civil Procedure, 1908 by the Applicant – wife.

2. Though served, none appears for the Respondent. Record indicates that several attempts have been made to serve Respondent. That he has evaded service of this Application. Four orders for effecting service have been passed by this Court since 09.12.2021. Ultimately, Respondent has been served through his Advocate Nita Pawar who represents him in the lower Court.

3. Parties got married on 07.06.2014. Respondent – husband initiated proceedings for dissolution of marriage / divorce pending on the file of Family Court, Pune of which transfer is sought by Applicant

to Family Court, Nashik, where she resides with her parents.

4. Perused grounds of hardship which are pressed in paragraph Nos.2 (xi), (xii) and (xiv) of the Application. There is one minor son 6 years old who is in the custody and care of Applicant. As Applicant – wife will be required to travel from Nashik to Pune 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 Nashik to Pune, 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 Pune to Nashik.

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 Pune and Nashik is 200 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 of the Petition no. A 1852 of 2021 filed by the Respondent – husband seeking divorce against the Applicant before the Ld. Family Court, Pune under Section 13 (1) i(a) of the Hindu Marriage Act, 1955 from Ld. Family Court, Pune to the Ld. Family Court, Nashik.”

[MILIND N. JADHAV, J.]

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