

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO.427 OF 2022

Neha Nilesh Walkar alias Meena Mohan Chavan .. Applicant
Versus
Nilesh Mohan Walkar .. Respondent.

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- Mr. Rohit P. Mahadik a/w. Mr. Rushikesh Bhagat i/b. Khande Parkar and Associates for Applicant.
 - Mr. Yash Dinde a/w. Ms. Heena Khan for Respondent.
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CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 02, 2022

P.C.:

1. Heard Mr. Mahadik, learned Advocate appearing for Applicant and Mr. Dinde, learned Advocate appearing for Respondent at length. Perused the Application. This is an Application filed under Section 24 of the Code of Civil Procedure, 1908 by the Applicant – wife.

2. Parties got married on 29.05.2009. Respondent – husband initiated proceedings for dissolution of marriage / divorce pending on the file of Civil Judge Senior Division, Oros, District Sindhudurg of which transfer is sought by Applicant to Family Court, Bandra. Applicant resides at Chandiwali with her daughter. Respondent is a Pharmacist and has a medical shop in Oros, District Sindhudurg.

3. Perused grounds of hardship which are pressed in paragraph

No.9 of the Application. There is one minor daughter aged 17 years who is in the custody and care of Applicant. As Applicant – wife will be required to travel from Mumbai to Oros, District Sindhudurg to attend the proceedings, it will cause prejudice and hardship to her.

4. 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.

5. Mr. Yash Dinde, learned Advocate for Respondent appeared and sought time for filing vakalatnama and prayed for time. He submitted that he has no further instructions.

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 Oros, District Sindhudurg, 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 Oros, District Sindhudurg 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 Oros, District Sindhudurg is around 550 kilometers.

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

“(a) that this Hon'ble Court be pleased to transfer the Application preferred by the Respondent, under the provisions of the Section 13(1)(ia) of the Hindu Marriage Act, 1955 bearing Petition No.148 of 2022, pending before Hon'ble Civil Judge Senior Division, Oras, Sindhudurg, at Oras to the Hon'ble Family Court at Bandra, Mumbai”.

[MILIND N. JADHAV, J.]

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