

H. H. Sawant

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO. 430 OF 2022

Snehal Akshay Saindre

.. Applicant.

Versus

Akshay Dashrath Saindre

.. Respondent.

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- Mr. Ajit Dilip Hon, for Applicant.
 - Mr. Ashwin Pimpale i/b. Mr. Rameshwar Gite for Respondent.
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CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 02, 2022

P.C.:

1. Heard Mr. Hon, learned Advocate appearing for Applicant and Mr. Pimpale, 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 17.12.2014. Respondent – husband initiated proceedings for dissolution of marriage / divorce pending on the file of Civil Judge, Senior Division, Niphad, District Nashik, of which transfer is sought by Applicant to Civil Judge Senior Division, Kopergaon, where she resides with her parents and son aged 7 years. Restitution proceedings have been filed before the Court in Kopergaon. Respondent is running his own hotel at Niphad, District Nashik.

3. Perused grounds of hardship which are pressed in paragraph Nos.4 (d) to (k) of the Application. There is one minor child aged 7 years who is in the custody and care of Applicant. As Applicant – wife will be required to travel from Kopargaon to Niphad, District Nashik, 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. Pimpale submitted that his senior Mr. Rameshwar Gite received intimation to appear for the Respondent and filed his vakalatnama. He submitted that he has no instructions to furnish objections on behalf of Respondent. In the facts of the present case strong grounds are made out for seeking transfer by the Applicant and keeping the proceeding pending at the behest of the Respondent would be detrimental to the interest of the Applicant.

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 Kopargaon to Niphad, District Nashik, 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 Niphad, District Nashik to Kopargaon.

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 Niphad, District Nashik to Kopargaon is 71 kilometers.

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

“(b) transfer the Marriage Petition No.102 of 2022 pending on the file of the learned Civil Judge, Senior Division, Niphad to the 2nd Joint Civil Judge, Senior Division, Kopargaon”.

[MILIND N. JADHAV, J.]

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