

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO. 438 OF 2022

Mrs. Nikita Agrawal w/o Praneet Agarwal .. Applicant
Versus
Mr. Praneet Vishnu Agarwal and Anr. .. Respondents

-
- Mr. Umar Dalvi i/by Mr. Rajendra Rathod, Advocate for Applicant.
 - None for Respondents.
-

CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 02, 2022

P.C.:

- 1.** Heard Mr. Dalvi, learned Advocate appearing for Applicant.
- 2.** Though served, none appears for the Respondents. 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 perused and it indicates that Respondent No.1 was served on 26.11.2022. The postal tracking report is annexed and confirms delivery of the notice and Application on Respondent No.1.
- 3.** Parties got married on 12.12.2016. 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, Bandra. Applicant resides in Andheri.

4. Perused grounds of hardship which are pressed in paragraph No.5/d, g, h, i, j and k of the Application. There is one minor son aged 3 years who is in the custody and care of Applicant. As Applicant – wife will be required to travel from Mumbai 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 Mumbai 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 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 Pune is 160 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 Petition bearing No.A-2399 of 2021 u/s. 13(1)(i-a) of Hindu Marriage Act, 1955 filed by the Respondent before the Family Court No.2 at Pune to Family Court at Bandra Mumbai on any terms and condition as this Hon’ble Court deem fit and proper.”

[MILIND N. JADHAV, J.]

AJAY
TRAMBAK
UGALMUGALE

Digitally signed by
AJAY TRAMBAK
UGALMUGALE
Date: 2022.12.03
15:28:49 +0530