

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO.451 OF 2022

Khyati Kaushik Shah

.. Applicant

Versus

Kaushik Dilip Shah

.. Respondent.

-
- Ms. Sarah Kapadia a/w. Ms. Vaishali Jain i/b. Vesta Legal for Applicant.
 - Mr. Ajinkya Udane, for Respondent.
-

CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 02, 2022

P.C.:

1. Heard Ms. Kapadia, learned Advocate appearing for Applicant and Mr. Udane, 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 23.05.2011. Respondent – husband initiated proceedings for Custody Petition pending on the file of Family Court, Bandra, Mumbai of which transfer is sought by Applicant to Family Court, Pune, where she resides with her children aged 9 years (son) and 4 years (daughter). Applicant works as Company Secretary in Pune. Respondent is a Credit Rating Advisor in Mumbai. D. V. Act proceeding filed by the Applicant is pending before Pune.

3. Perused grounds of hardship which are pressed in paragraph Nos.b and c of the Application. There are two minor children who are in the custody and care of Applicant. As Applicant – wife will be required to travel from Pune to Bandra, Mumbai to attend the proceedings, it will cause prejudice and hardship to her.

4. Mr. Udane has fairly submitted that he has obtained consent from the Respondent to allow prayer clause (a) of the Application.

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 Pune to Bandra, Mumbai, 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 Bandra, Mumbai to Pune.

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 Bandra, 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 pass an order directing the Hon’ble Family Court in Bandra to transfer the Custody Petition bearing No. D-123 of 2022 before the Hon’ble Family Court, Pune to try, entertain and dispose of the same.”

10. At the joint request of the parties, it is further directed that both proceedings, i.e. D.V. Act Application No.1895 of 2022 will be heard alongwith the Custody Petition which is being transferred by the Family Court, Pune.

[MILIND N. JADHAV, J.]