

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

MISC. CIVIL APPLICATION NO.141 OF 2017

**DR. PURVA W/O KUNTAL PAL
VERSUS
DR. KUNTAL S/O GOPALBIHARI PAL**

.....
Advocate for the Applicant : Mr. Gajanan G. Kadam
Advocate for the Respondent : Mr. Vishal V. Sawant
....

**CORAM : SANDIPKUMAR C. MORE, J.
DATED : 11/08/2023.**

P. C. :

1. Heard rival submissions.
2. The applicant - wife is seeking transfer of HMP NO.178 of 2017 for getting divorce, pending in the court of the learned Civil Judge (S.D.), Panvel filed by the respondent - husband to the learned Family Court at Nanded.
3. According to the applicant, she got married with the respondent-husband in the year 2010 and in the said marriage she had given dowry of Rs.5 lakhs and 50 grams gold alongwith other household articles to the respondent- husband. However, the respondent and his family members drove her out of house and kept at Kharghar in a rented house. Further, according to her, the respondent-husband completely neglected her and therefore, she was constrained to reside at Nanded with her mother. She also filed Marriage Petition No.A-12 of 2017 under section 9 of the

Hindu Marriage Act for the restitution of conjugal rights against the respondent-husband at Family Court, Nanded. However, the respondent-husband as a counter-blast to her petition, filed HMP No.178 of 2017 for getting divorce in the court of Civil Judge (S.D.), Panvel. According to her, she also filed Petition No.E-65 of 2017 before the Family Court at Nanded under Section 125 of Cr.P.C. for getting maintenance, wherein her son was granted maintenance amount. According to her, the distance between Panvel and Nanded is so long that she is unable to attend the dates at Panvel and therefore, the application needs to be allowed.

4. On the contrary, the respondent-husband strongly opposed the application by filing an affidavit in reply contending that the applicant-wife is in fact a short tempered, quarrelsome, cruel lady with criminal attitude and she harassed him and his family members by using objectionable languages with sexual remarks. She also behaved in cruel manner with him as well as his old aged father, which resulted into filing of non-cognizable cases against her at the concerned police stations. According to the respondent-husband, the applicant is a doctor by profession and earns income of Rs.1 lakh and more per month. He contended that before filing the petition for restitution of conjugal rights by the applicant-wife in Family Court, Nanded, he had already sent a notice to her expressing his intention to take divorce by mutual consent but said notice was not accepted by the applicant-wife.

5. The learned counsel for the applicant - wife argued as per the allegations made by the applicant-wife in the application and also relied on following citations.

- A) *T. Gayatri Devi vs. Tallepaneni Sreekanth, reported in MANU/SC/0857/2013;*
- B) *Renu Gautam vs. Vinod Gautam, reported in MANU/SC/0887/2000;*
- C) *N. C. V. Aishwarya vs. A. S. Saravana Karthik Sha, reported in MANU/SC/1211/2022;*
- D) *Vaishali Shridhar Jagtap vs. Shridhar Vishwanath Jagtap, reported in MANU/SC/0794/2016 &*
- E) *Sheetal Pankaj Patil vs. Pankaj Himmatrao Patil, reported in /MANU/MH/1506/2021.*

6. On the contrary, the learned counsel for the respondent-husband produced a chart on record, wherein various litigations including the criminal prosecution in respect of the applicant-wife are mentioned. He also relied on certain earlier orders passed by the concerned courts in their litigations. He relied upon judgment of the Hon'ble Apex Court in the case of *N.C.V. Aishwarya vs. A. S. Saravana Karthik Sha, reported in AIR ONLINE 2022 SC 1268*.

7. On going through the entire material on record, it appears that both the parties are well educated and medical practitioners. Further, so many serious allegations are levelled by them against each other. However, those allegations are the part of merits. In transfer matters, convenience of the parties is to be seen primarily. No doubt, the Hon'ble Apex Court in the judgment relied upon by the learned counsel for the respondent-husband in the case of *N.C.V. Aishwarya (supra)*, has discussed the aspects for

consideration while exercising the powers under Section 24 of the Civil Procedure Code as follows :

"9. The cardinal principle for exercise of power under Section 24 of the Code of Civil Procedure is that the ends of justice should demand the transfer of the suit, appeal or other proceeding. In matrimonial matters, wherever courts are called upon to consider the plea of transfer, the Courts have to take into consideration the economic soundness of both the parties, the social strata of the spouses and their behavioural pattern, their standard of life prior to the marriage and subsequent thereto and the circumstances of both the parties in eking out their livelihood and under whose protective umbrella they are seeking their sustenance to life. Given the prevailing socio-economic paradigm in the Indian society, generally, it is the wife's convenience which must be looked at while considering transfer."

8. The learned counsel for the respondent-husband relied upon the aforesaid observation specially in respect of behavioural pattern of the applicant, which according to him, is of criminal nature. However, in the same observation, the Hon'ble Apex Court has expressed its view that in prevailing socio-economic paradigm in the Indian society, generally, it is the wife's convenience which must be looked at while considering transfer.

9. Admittedly, the chart relied upon by the learned counsel for the respondent-husband indicates so many litigations, wherein the present applicant-wife is involved. However, most of those litigations are not in respect of matrimonial relationship between

the parties. It is equally important to note that the petition for restitution of conjugal rights appears to be filed before the petition of divorce filed by the respondent-husband at Nanded. Moreover, it appears that the respondent-husband actively participated in the proceeding at Nanded, wherein he was asked to pay certain amount of maintenance to his son, who is residing with the applicant-wife. The learned counsel for the applicant -wife has also relied upon the judgments cited supra and the sum & substance of the aforesaid judgment is that even though the applicant-wife is not indigent lady and she is capable of contesting the suit filed by the husband by undertaking journey but such reasons are clearly unsustainable for refusing the transfer as claimed by the wife. Moreover, the Hon'ble Apex Court in other judgments, has also recorded the observation that the convenience of the wife needs to be considered ahead of convenience of the husband. Further, it is also settled that when two different proceedings are pending in two different courts, which are based on identical set of facts, then it is always advisable that such proceedings are to be dealt with by one and the same court for avoiding conflict of decisions.

10. Here in this case, though the parties have levelled serious allegations against each other, but considering the fact that the respondent-husband has already attended the proceedings filed by the applicant-wife in Family Court, Nanded, the convenience lies in favour of the applicant-wife. Accordingly I pass following order :

ORDER

- I) The application is hereby allowed.

- II) HMP No.178 of 2017, pending in the Court of Civil Judge (S.D.), Panvel is hereby transferred to the learned Family Court, Nanded for its simultaneous disposal alongwith the petition filed therein by the applicant-wife for restitution of conjugal rights, according to law.
- III) The respondent-husband is directed to appear before the learned Family Court, Nanded on or before 11/09/2023.
- IV) The respondent-husband is at liberty to seek convenient dates from the learned Family Court, Nanded for both these proceedings.
- V) The respondent-husband is at liberty to appear in the aforesaid proceedings through his counsel except on the dates where his physical presence is required. Besides, he may use the facility of video conferencing wherever possible.
- VI) The applicant-wife shall not seek unnecessary adjournments in these proceedings.
- VII) The application is accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)