

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

MISCELLANEOUS CIVIL APPLICATION NO.4 OF 2021

Kirti w/o Deepak Dalvi

Applicant

Versus

Deepak Shivaji Dalvi

Respondent

...

Mr. Hemant Surve, Advocate for the applicant.

Mr. Vinod I. Thole, Advocate for respondent.

...

CORAM : SANDIPKUMAR C. MORE, J.

DATED : 20th January 2023.

ORDER :

1. Heard rival submissions. The applicant – wife is seeking transfer of Petition No.A-300/2020 filed by the respondent – husband for getting divorce, from the Family Court, Nashik to the Family Court at Aurangabad.

2. According to the applicant, she was posted at Aurangabad as a Teacher and after marriage, was residing with respondent – husband at Vajapur since it was convenient for the respondent to attend his duty at Nashik. She claims that since they never resided at Nashik being husband and wife, the aforesaid petition filed by the respondent – husband at Nashik is prima facie not maintainable.

3. The learned Counsel for the applicant strongly placed reliance on Section 19 of the Hindu Marriage Act, 1955 which is reproduced below for quick reference :

“19. Court to which petition shall be presented. —Every petition under this Act shall be presented to the district court within the local limits of whose ordinary original civil jurisdiction—

- (i) the marriage was solemnised, or*
- (ii) the respondent, at the time of the presentation of the petition, resides, or*
- (iii) the parties to the marriage last resided together, or*
- [(iii-a) in case the wife is the petitioner, where she is residing on the date of presentation of the petition, or]*
- (iv) the petitioner is residing at the time of the presentation of the petition, in a case where the respondent is, at that time, residing outside the territories to which this Act extends, or has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of him if he were alive”.*

The learned Counsel for the applicant, thus, pointed out that the petition for divorce filed by the respondent at Nashik Family Court, is therefore, not maintainable on the point of jurisdiction. Further, he also relied on the following judgments of the Hon’ble Apex Court as well as this Court, wherein the convenience of wife is given prime importance.

- (i) N.C.V. Aishwarya vs A.S. Saravana Karthik Sha (2002 SCC OnLine SC 1199)*
- (ii) Sumita Singh vs. Kumar Sanjay and another 2014 ALL SCR (O.C.C.) 11*

*(iii) Krutika Ritesh Aruya vs Ritesh Laxman Arya
2016 (5) ALL MR 37*

*(iv) Mrs. sharda Vaibhav Karandikar vs Mr. Vaibhav
Kiran Karandikar, 2016 (1) ALL MR 134*

4. On the contrary, learned Counsel for the respondent strongly opposed the submissions made on behalf of the applicant. According to him, the applicant was in fact residing with respondent husband at Nashik after the marriage since the respondent was serving in Nashik. He submits that the applicant was intermittently going to Nashik to reside with the husband and also attending her duties in Aurangabad district. He pointed out that now the applicant is transferred in Nashik district and at present working in Dindori Taluka as a Teacher. Not only this, but the daughter of applicant and respondent is also taking education in 1st Standard in Udoji Horizon School, Nashik situated at Gangapur road. Thus, he submits that there cannot be any inconvenience for the applicant – wife if the petition for divorce filed by the respondent – husband in Family Court, Nashik is allowed to proceed there only.

5. It is significant to note that though the applicant was initially served in Aurangabad district, but the documents on record, such as, bonbafide certificate of the daughter of

rival parties Kum. Reva, indicates that she is taking education at Nashik. Moreover, the copy of appointment letter of the applicant filed by respondent alongwith his affidavit-in-reply clearly indicates that she has been transferred to the school at Dindori Taluka from her earlier posting at Aurangabad. Moreover, subsequent appointment letter dated 06.12.2021, which is current one, also indicates that the applicant is now serving in Z.P. School at Ashewadi, Taluka Dindori, District Nashik from the date of aforesaid letter.

6. Though the learned Counsel for the applicant strongly submitted that as to how the petition filed by the respondent is not maintainable in Family Court, Nashik in view of Section 19 of the Hindu Marriage Act, 1955, but the respondent has specifically claimed in the said petition that the applicant was residing with him at Nashik, more specifically, in House No.6, Shriraj Pride, Vitthalwadi, Audumbar Nagar, Amrutdham Panchwati, Nashik-3. If at all the applicant is having any grievance about jurisdiction of the said petition, she may raise objection to that effect and establish it otherwise. At present, the learned Family Court, Nashik has allowed filing of the petition for deciding the same according to law. It is significant to note that the objection

raised by the applicant on account of jurisdiction needs to be established in the light of facts, for which the evidence will be required. Merely by contending that the applicant did not reside with the husband within the jurisdiction of the Family Court, Nashik, will not suffice the purpose. Further, the jurisdictional point will be decided in due course, but what is important, that the applicant is in permanent service as a Teacher and at present working in the Z.P. School, Nashik at Ashewadi, Taluka Dindori. Moreover, her daughter Reva is also taking education in the school at Nashik.

7. Thus, it is highly difficult to accept the fact that it would be convenient for the applicant – wife if the petition filed by respondent – husband is transferred to the Family Court at Aurangabad. On the aspect of convenience also, there is no case in favour of the applicant, since she herself is residing at Nashik alongwith her daughter. Considering all these facts, I am not inclined to grant the prayer of transfer as claimed by the applicant in this application. Resultantly, the application stands rejected.

(SANDIPKUMAR C. MORE, J.)