

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

MISCELLANEOUS CIVIL APPLICATION NO.228 OF 2023

Ashwini Nirajan Kurane	... Applicant
Vs.	
Nirajan Subhash Kurane	... Respondent

Mr. Yogesh Morbale with Ms. Namrata Vora i/by Mr. Vinod P. Sangvikar,
Advocates for the Applicant.
None for the Respondent.

CORAM : ABHAY AHUJA, J.
DATE : 20 DECEMBER, 2023.

P.C. :

1. Pursuant to order dated 20th October, 2023, this Court is informed that an additional affidavit has been filed to substantiate the grounds of inconvenience and undue hardship caused to the Applicant by the Respondent.

2. Mr. Yogesh Morbale, learned counsel for the Applicant appears and submits that no reply has been filed despite service and this Court had already commenced hearing the matter on 20th October, 2023, when a direction was given to file an additional affidavit to explain the grounds of inconvenience and undue hardship. Learned counsel submits that an additional affidavit dated 6th November, 2023 has been filed.

3. It is observed that the application has been filed by the wife for transfer of the Divorce Petition filed by the Respondent - husband in Pune to the Court of Civil Judge Senior Division at Barshi, District Solapur. Mr. Morbale, learned counsel for the Applicant - wife would submit that earlier the Respondent - husband had filed a petition for restitution of conjugal rights in Pune which was withdrawn and thereafter the subject Divorce Petition has been filed in Pune. Prior to the filing of the Divorce Petition, the Applicant-wife had already filed domestic violence proceedings against the Respondent and his family on 21st April, 2022 in Barshi. Referring to the additional affidavit, learned counsel would submit that the Applicant is unemployed. That her father retired in the year 2014 as a Class-III employee from the PWD department. That her mother owns land of around 50 ARE which was purchased 8 years back, however, due to drought not much is earned from the said land. That the mother is a homemaker and solely dependent on the father. That the Applicant has no independent source of income and is dependent on the father and on his pension. That she has a brother who is married and living separately.

4. It is submitted by Mr. Morbale that the distance between Barshi and Pune is more than 223 kilometers and due to the age and health

conditions of the father, he will not be in a position to accompany her to Pune every time the matter will be listed there. Learned counsel would submit that considering the aforesaid situation, it would not only be inconvenient but also cause undue hardship to the Applicant to travel to Pune. Mr. Morbale also informs that the stage before the Family Court Pune is for filing of written statement.

5. Learned counsel submits that in view of the principles laid down by the Hon'ble Supreme Court in the case of **N.C.V. Aishwarya Vs. A.S. Saravana Karthik Sha¹**, this Court transfer the divorce proceedings filed by the husband before the Family Court, Pune to the Court of Civil Judge Senior Division, Barshi, District Solapur.

6. I have heard the learned counsel for the Applicant and also perused the application. The Respondent-husband has neither filed any reply nor cared to remain present or appoint an Advocate in the matter despite several opportunities. Accordingly, the allegations made in the application have gone unchallenged.

7. The Hon'ble Supreme Court in the case of **N.C.V. Aishwarya Vs. A.S. Saravana Karthik Sha (supra)** as well as this Court in a number of

¹ AIR 2022 SC 4318

decisions has observed that while considering application under Section 24 of the Code of Civil Procedure, 1908 and particularly in matrimonial matters where the Court is deciding the plea of transfer, it is the wife's convenience which is to be considered.

8. Applying the aforesaid principles to the facts of this case, I am of the view that ends of justice would be met, if the divorce proceedings pending before the Family Court, Pune are transferred to the Court of Civil Judge Senior Division, Barshi, District Solapur.

9. The Application stands allowed in terms of prayer clause (c) which reads thus:-

(c) "This Hon'ble Court may kindly be pleased to transfer the Petition A-2155/2022 pending before the Hon'ble Family Court, Pune to the Hon'ble Civil Judge Senior Division, Barshi, at Barshi, District Solapur. "

10. It is made clear that any observation(s) on the merits of the dispute between the parties is only to consider this application which shall not influence the trial or disposal of the Divorce Petition which is to be tried and decided on its own merits uninfluenced by the said observation(s).

(ABHAY AHUJA, J.)