

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

MISCELLANEOUS CIVIL APPLICATION NO. 114 OF 2022

Sou. Vishakha Bhaskar Adate @ Lokhande	.. Applicant
v/s.	
Shri. Bhaskar Baburao Adate	.. Respondent

...

Mr. Laxman Kalel for the Applicant.

CORAM : KAMAL KHATA, J.

DATED : 6TH JUNE 2023.

P.C. :

1. This Miscellaneous Civil Application is filed by the applicant-wife under Section 24 of the Civil Procedure Code, 1908 to transfer H.M.P. No. A2144 of 2019, filed by the respondent husband under section 13(1) (i-a) (i-b) of the Hindu Marriage Act, 1955 for divorce from the applicant which is pending before the 3rd Family Court, Bandra to the Family Court, Sangli.

2. The Applicant's case is that the Respondent without informing the Applicant went to reside at Sangli in or around March 2018. Furthermore, the Respondent filed a Petition viz. H.M.P No. A2144 of 2019 for divorce on 7th August 2019 on the ground that the Applicant refused to cohabit with the Respondent since 3rd November 2018.

3. Be that as it may, it is stated by the Applicant that she has two minor daughters aged 11 years and 7 years whom she is nurturing with the help of her father and without any monetary assistance from the Respondent. The learned counsel for the Applicant therefore submitted that the transfer Application be granted.

4. No one appeared for the Respondent though served.

5. The law with respect to transfer of proceedings, particularly matrimonial disputes, is no longer res-integra, the ratio laid down by the Hon'ble Supreme Court in the cases of *Smita Singh v. Kumar Sanjay reported in (2001) 10 SCC 41 : AIR 2002 SC 396* and *N.C.V. Aishwarya v. A. S. Saravana Karthik Sha reported in AIR 2022 SC 4318* is that the convenience of the wife which is preferred over the convenience of the husband that has to be looked into, while ordering the transfer of a case from one Court to another.

6. In the light of the law laid down in the afore-cited decisions, the pleadings and materials on record and the totality of the facts and circumstances of this case, particularly the fact that not only will the Applicant have to take obligations from someone to take

care of the daughters in her absence but will suffer undue hardship and expense to travel from Sangli to Mumbai, I am inclined to exercise the discretionary powers of this Court under Section 24 of the Code of Civil Procedure and allow the application for transfer.

7. It is however made clear that, if a video conferencing facility is available, then on dates when the physical presence of the husband is not required, he may be permitted to attend the proceedings through video conferencing, upon an appropriate application made to the court in that behalf.

8. In view of the above, I allow the transfer Application as follows:

- i. Proceeding bearing number H.M.P. No. A2144/2019, u/s 13 (1) (i-a), (1-b) of the Hindu Marriage Act, 1955 filed and pending before the 3rd Family Court at Bandra be stayed pending the transfer ; and be transferred to the Family Court, Sangli.
- ii. The Registry shall forward a copy of this order to the 3rd Family Court, Bandra with instructions to forthwith transmit the records of H.M.P. No. A2144/2019 between the Applicant and the Respondent to the Family Court,

Sangli preferably within 4 weeks from the receipt of this order.

iii. The Family Court, Sangli shall on receipt of the records of H.M.P. No. A2144/2019, fix a date preferably within 3 week and issue notice to the parties for proceeding with the matter.

9. All concerned to act on the authenticated copy of this order.

(KAMAL KHATA, J.)