



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

MISCELLANEOUS CIVIL APPLICATION NO.356 OF 2022

SAU. ANURADHA ROHIT KADAM)...APPLICANT

V/s.

MR. ROHIT HANUMANTRAO KADAM)...RESPONDENT

Ms.Leena Patil, Advocate for the Applicant.

CORAM : ABHAY AHUJA, J.

DATE : 8th SEPTEMBER 2023

PC. :

1. When the matter is called out, learned Counsel for the Applicant-wife submits that now there is a Family Court at Sangli, therefore, the Marriage Petition pending before the Family Court, Pune be transferred to Family Court, Sangli. Learned Counsel would submit that she be permitted to amend the Application and the prayers. Let the amendment be carried out forthwith.

2. This is an Application seeking transfer of Petition No.PA-806 of 2019 filed by the Respondent-husband before the Family Court No.3, Pune, for divorce to the Family Court, Sangli. When the matter was

listed on 29th August 2023, the following order was passed :

“ On 19th December, 2022, the following order was passed :-

“1. Heard learned counsel for the applicant. Though respondent is served, none present for the respondent. Last chance is given to the Respondent to go on with the matter. Stand over to 31st January, 2023.”

2. Today when the matter is called out, Mr. Shaikh, learned counsel appears for the applicant and submits that though notice has been issued to the sole respondent and received, however, none is appearing for the respondent. Learned counsel would submit that the stage before the Family Court, Pune is for document admitting and cross examination and submits that the next date is 8th September, 2023.

3. List this matter on 8th September, 2023.

4. It is made clear that if none appears for the respondent on 8th September, 2023, the applicant would be heard and appropriate orders will be passed.”

3. Today, again, none appears on behalf of the Respondent-husband. Accordingly, this Court proceeds to hear the Applicant and pass orders on the Miscellaneous Civil Application.

4. Learned Counsel for the Applicant-wife would submit that the marriage between the Applicant and Respondent was solemnized on 11th May 2018 as per Hindu Vedic rights and rituals at Vita, District Sangli. She would submit that, soon thereafter, the Respondent-

husband started ill-treating the Applicant-wife on one pretext or the other and although the Applicant-wife tried to convince the Respondent-husband and her in-laws, however, there was no change in the conduct of the Respondent-husband. Learned Counsel would submit that, finally, in the month of January 2019, the Applicant-wife was driven out of the matrimonial home. Thereafter, the Applicant's family also tried to reconcile with the Respondent many times but it did not work out. Learned Counsel submits that the Applicant-wife has been residing with her old parents at her native place at Sawantpur, which is a small village. She would submit that in July 2019, the Applicant-wife had filed proceedings under the Protection of Women from Domestic Violence Act, 2005 before the Judicial Magistrate First Class, Palus against the Respondent-husband and his family members claiming protection and maintenance, which, the learned Counsel submits is pending. Thereafter, on 31st August 2019, Applicant-wife was surprised to receive notice along with a copy of the Divorce Petition by the Respondent-husband under Section 13(1)(ia), 13(1)(a) of the Hindu Marriage Act, 1955, filed in the Family Court, Pune for divorce by the Respondent-husband.

5. Learned Counsel would submit that the Applicant-wife, although qualified as a Master in Computer Applications, is unemployed, having no independent source of income and completely dependent and living under the shelter and mercy of her parents. Learned Counsel submits that the distance between Sangli and Pune is around 255 kilometers one way and because of the ill-treatment by the Respondent-husband and his family members, she has lost her confidence and unable to travel alone from her native place Sawantpur to Pune, which is more than 255 kilometers one way. Learned Counsel would submit that it takes more than six hours to reach the Family Court, Pune from her native place and she has to either go to Kirloskarwadi or to Palus to take the train or bus and the frequency of the buses and trains is also very less. Learned Counsel would submit that, therefore, it would not only be inconvenient for the Applicant-wife to travel to Pune every time the matter is listed before the Pune Court but also cause undue hardship. Learned Counsel submits that the Applicant-wife also apprehends that there is a threat to her life at the hands of the Respondent-husband and his family members, if she travels to Pune. That, therefore, the Applicant-wife had also filed Domestic violence proceedings for protection and maintenance before the Judicial Magistrate First Class, Palus, Sangli.

6. Learned Counsel would submit that the Respondent-husband, on the other hand, is an Engineer by profession and serving in the State of Gujarat. Learned Counsel submits that, infact, in the past, whenever the Applicant-wife was in Pune and residing with his parents, the Respondent-husband would come under the influence of liquor and cause harassment and tension to the Applicant-wife which has made the Applicant-wife physically and mentally weak. Therefore, she has been advised by her doctor not to travel frequently.

7. The Respondent-husband, as noted above, though served and despite opportunities given to attend to the matter, has remained absent.

8. It is settled law that while considering applications under Section 24 of the Code of Civil Procedure, 1908 the inconvenience and undue hardship caused to the wife is of paramount importance. The Hon'ble Supreme Court in the case of **N.C.V. Aishwarya Vs. A.S. Saravana Karthik Sha**¹ has highlighted this very aspect considering the Indian socio-economic paradigm generally it is the wife's convenience which must be looked at while considering transfer. Paragraph No. 9 of the

¹ SCC Online SC 1199 (2022)

said decision is usefully quoted as under :-

“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 behavioral 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 like. 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.”

(emphasis supplied)

9. Having heard the learned Counsel and having considered the above submissions and also having perused the Application, this Court is of the view that ends of justice would be met if the Divorce proceedings pending before the Family Court, Pune are transferred to the Family Court at Sangli.

10. Ergo, the Application is made absolute in terms of Prayer clause

(a) which reads thus :

“This Hon’ble Court be pleased to transfer the Marriage Petition No.PA-806 of 2019 pending before the Family Court No.3, Pune to the Family Court, Sangli.”

11. It is made clear that any observations on the merit of the dispute between the parties is only to consider this application which shall not influence the trial or disposal of the Marriage Petition which is to be tried and decided on its own merits uninfluenced by the said observations.

(ABHAY AHUJA, J.)