



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISCELLANEOUS CIVIL APPLICATION NO.34 OF 2023

Mrs. Saumya Sumit Jadhav

... Applicant

Vs.

Mr. Sumit Vasant Jadhav

... Respondent

Mr. Shreyash S. Butala, Advocate for the Applicant.
None for the Respondent.

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

P.C. :

1. This is an application filed by the Applicant-wife seeking to transfer divorce petition filed by the Respondent-husband and pending before the Family Court at Bandra to the Court of Civil Judge Senior Division at Khed under section 24 of the Code of Civil Procedure, 1908 ("CPC").

2. Earlier notice was issued in the matter on 17th March, 2023, which as noted in order dated 28th August, 2023 has been duly served upon the Respondent. On 19th June, 2023 the proceedings filed by the Respondent-husband before the Family Court at Bandra were stayed by this court in terms of prayer clause (c). Learned counsel for the Applicant-wife has submitted that the stage at which the proceedings before the Bandra Court were stayed was for

appearance. It is noted from the record that number of opportunities have been granted for the Respondent to appear or be represented. However, none appears for the Respondent today as well.

3. On 28th August, 2023, the following order was passed :-

“1. This application filed under section 24 of the Code of Civil Procedure, 1908 seeks to transfer Divorce Petition, Petition A-2563-2022 pending before the Family Court at Bandra to the court of Civil Judge, Senior Division, At Khed, District Ratnagiri.

2. Mr.S.S.Butala, learned counsel for the Applicant submits that the record also bears it out that the notice issued by this court has been duly served upon the Respondent. The affidavit of service by private mode has also be filed in this court. Despite the same, none appears on behalf of the Respondent. The proceedings in the Bandra Court have already been stayed by an earlier order of this court. However, since none appears for the Respondent-husband as and by way of last chance, list on 20th September, 2023.

3. It is made clear that if none appears for the Respondent-husband and /or the Respondent-husband is not present, this court will proceed to hear the application and pass appropriate orders.

4. Ad-interim order granted earlier to continue till the next date.”

4. Therefore, in accordance with the aforesaid order, the learned counsel for the Applicant urges this court to hear the application.

5. Mr.Shreyash S. Butala, learned counsel for the Applicant would submit that the marriage between the Applicant and the Respondent was solemnized on 21st February, 2021 as per Buddhist rights and rituals at Bandra (E), Mumbai. After solemnization of the marriage the wife went to stay with the husband in Mumbai. Within a month of the marriage, the Applicant-wife became pregnant. Learned counsel would submit that however due to the mental, verbal and physical abuse by the husband, the Applicant was on 14th July, 2021 taken back by her family members to her parental home at village Natunagar, Taluka Khed, District Ratnagiri and since then the Applicant has been staying there. That the Applicant delivered a daughter on 13th November, 2021. Thereafter, on 21st May, 2022 a meeting was held between the family members of the Applicant and the Respondent-husband, where the Respondent and his family members sought to question the character of the Applicant-wife. Thereafter, on 28th September, 2022 the Applicant has filed domestic violence proceedings before Judicial Magistrate First Class, Khed for maintenance and protection. Learned counsel would submit that the summons with respect to the divorce petition filed by the Respondent-husband was received on 21st November, 2022. Soon thereafter this application was drafted and signed on 22nd November, 2022, after which it was filed on 30th November, 2022 before this court.

6. Mr.Shreyash S. Butala, learned counsel for the Applicant would submit that the Applicant is unemployed, is only 12th standard pass and has no

independent and individual source of income. She is living with her grandfather and mother; the grandfather who is 75 years old is suffering from B.P, diabetes and heart problem for which he needs regular medication; that he is unable to undertake long journeys at this age due to the health issues and the risks associated with it; That the mother also has health issues for which she is frequently required blood transfusion every three to six months and is in such a condition that she cannot travel to Mumbai to accompany the Applicant as the same would take too long. Mr.Butala would submit that the Applicant-wife also has to take care of one and half years' old daughter in addition to the grandfather and the mother; that grandfather and the mother due to their health issues are not in a position to take care of one and half years infant. If the Applicant has to travel to Mumbai every time the matter is listed here, and since the grandfather and the mother cannot accompany the Applicant, the Applicant needs another care-taker to accompany her to take care of one and half years old child during the journey. Learned counsel would submit that not only that the distance between Mumbai and Khed is approximately 230 kms. one way and it takes around 6 to 7 hours one way by public transport; That the village Natunagar is at an interior remote location from where accessibility is a major issue. That early morning and post evening there is not any public transport available from her place of residence to the bus-stop. As mentioned, the Applicant does not have source of income to afford for the travel to Mumbai; that the family is into agriculture and from the meagre income they obtain from

selling agriculture produce, the Applicant would not be in a position to undertake the expenses of travelling and stay in Mumbai on dates when the matter is listed at Bandra.

7. Learned counsel would submit that on the other hand the Respondent is permanent worker with the Bombay Municipal Corporation and earns Rs.12,00,000/- per annum and has no other responsibility. Learned counsel would submit that therefore the divorce petition be transferred from Bandra Family Court to the Court of the Civil Judge Senior Division, at Khed, District Ratnagiri as for the Applicant to travel to Mumbai would not only be inconvenient but also cause undue hardship as narrated earlier.

8. Learned counsel submits that there are several judgments of the Hon'ble Supreme Court where it has been laid down that the convenience of the wife should be considered in matters such as this.

9. I have heard Mr. Butala, learned counsel for the Applicant-wife and also perused the application. The Respondent though served, has neither chosen to remain present nor is represented despite opportunities as recorded in previous orders of this court.

10. The Hon'ble Supreme Court in the case of Aishwarya has clearly emphasized that while considering matters under section 24 of the CPC, the convenience of the wife has to be seen. 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.

Paragraph No.9 of the 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 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 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)

11. This court has also in several matters highlighted this very aspect. This is a gross case where the wife who has a one and half years old infant to take care at a distance village 230 kms. from Mumbai, in addition to an aged grandfather and mother who were suffering from various ailments not only unable to take care of the infant but also unable to accompany the wife to the Court at Bandra. The facts narrated by the learned counsel clearly reveal the inconvenience and the undue hardship that would be caused to the Applicant if

1 SCC Online SC 1199 (2022)

the divorce petition pending at the Family Court, Bandra is not transferred to the Court of Civil Judge Senior Division, Khed. Mr. Butala, learned counsel for the Applicant informs that the court of Civil Judge Senior Division, Khed is only 10 minutes away from the Applicant's village Natunagar by public transport and if the divorce petition is transferred from Bombay to Khed that would be a complete relief to the Applicant.

12. Having heard the learned counsel and having considered the aforesaid discussion, this court is inclined to allow the petition and transfer the proceedings from the Family Court, Bandra to the Court of Civil Judge Senior Division, Khed.

13. The application is allowed in terms of prayer clause (b) which reads thus :-

“The Petition A-2563-2022 pending before the Ld. Judge, Family court, Mumbai at Bandra be transferred to the Ld. Civil Judge, Senior Division at Khed, District Ratnagiri.”

14. It is made clear that any observations 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 observations.

(ABHAY AHUJA, J.)