

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

MISCELLANEOUS CIVIL APPLICATION NO. 117 OF 2023

Mrs. Vaishali Ravindra Ghatole	.. Applicant
v/s.	
Mr. Ravindra Manohar Ghatole	.. Respondent

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Mr. Y. P. Kakade and Mr. M. A. Dadhav for the Applicant.
Mr. Aviraj S. Tarar (Tarar Law Associates) a/w Mr. Arjun Palhade
for the respondent.

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CORAM : KAMAL KHATA, J.
DATED : 8th AUGUST, 2023.

P.C. :

1. This Miscellaneous Civil Application is filed by the Applicant wife under section 24 of the Code of Civil Procedure 1908, for transfer of Marriage Petition No. 1877/2022 filed by the Respondent-husband for Restitution of Conjugal Rights before the Civil Judge, Senior Division, Kalyan, District Thane to Civil Judge Senior Division, Pune.

2. The Applicant's case is that the marriage took place on 8th July, 2011 at Chandrapur. They have two children out of wedlock. First son was born on 7th May, 2012 and the second was born on 2nd March, 2019. On 11th September, 2019 the applicant was abandoned by the respondent. Therefore, the applicant is staying separately with her parents. Whereas on 19th May 2022 the applicant filed a complaint under Section

12 of Domestic Violence Act before the Hon'ble Court of JMFC, Pune, on 21st July, 2022 a petition seeking decree of Divorce was filed before the Hon'ble Court of Civil Judge Senior Division, Pune bearing MP/1300/2018 under 13(1) (ia). On the other hand, the Respondent filed a petition on 6th July, 2022 for Restitution of Conjugal Rights bearing Marriage Petition No. 1877/2022 before the Civil Judge, Senior Division, Kalyan, District Thane.

3. Learned counsel for the applicant submits that the applicant is working in Pune and has two minor children to look after besides an aged mother. He submits that the respondent has wrongfully abandoned her and their children. He has not paid any interim maintenance and reneged from his responsibility as father to his children. He submits that the respondent is gainfully employed in a private IT sector company and is well placed in life. He submits that he visits Pune not only for the proceedings, which are filed in Pune but also for work purposes. He therefore submits that no prejudice would be caused to the respondent if the petition be transferred from Kalyan to Pune.

4. On the other hand, the learned Counsel for the respondent submits that the wife has a good support system and the

children can be looked after by the applicant's mother. Therefore he submits that the reason for unable to travel on account of minor children is baseless. He submits that the respondent resides at Ambarnath and therefore it would be convenient for him to travel to Kalyan. He therefore submits that the application for transfer be rejected.

5. I am of the view that the wife will undergo tremendous hardship, inconvenience and expense to travel from Pune to Kalyan on each day that the court requires her attendance. She is also likely to lose her job on account of such travel. The respondent Counsel was asked whether he was willing to pay travel charges which he flatly refused. The respondent husband appears to be shirking his responsibilities which cannot be encouraged. The applicant does not seem to be taking any undue advantage. The balance of convenience tilts in favour of the applicant in the facts of this case.

6. 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 ***Sumita Singh v. Kumar Sanjay***¹ and ***N.C.V. Aishwarya v. A. S. Saravana Karthik Sha***² that in matrimonial disputes, it is the

1 (2001) 10 SCC 41 : AIR 2002 SC 396

2 2022 SCC OnLine 1199

convenience of the wife which is preferred over the convenience of the husband while considering the transfer of a case from one court to another. In view of the above, I am inclined to allow this application and pass the following order;

(i) Application is allowed in terms of prayer clauses (a).

(ii) The proceedings and application made in M.P. No. 1877/2022 pending before Civil Judge, Senior Division, Kalyan, District Thane, be stayed pending transfer; and be transferred to Civil Judge Senior Division, Pune.

(iii) The transfer may be effected within a period of four weeks and upon receipt of the papers and proceedings the Civil Judge Senior Division, Pune shall give notice to the parties, preferably within three weeks, to proceed with their respective matters.

(iv) Civil Judge Senior Division, Pune may grant video conferencing facility to the respondent if he applied for and if his physical presence is not absolutely necessary.

(v) All concerned to act on the authenticated copy of this order.

(KAMAL KHATA, J.)