

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

MISC. CIVIL APPLICATION NO. 101 OF 2019

Mrs. Gulnisa Parvez Patel.	.. Applicant
Vs.	
Mr. Parvez Shahabuddin Patel	.. Respondent

Mr. Ansari Shahed Ali Inayat Ali, for the Applicant.

CORAM : KAMAL KHATA, J.

DATE : 12 JUNE, 2023.

P.C. :

1. Learned Advocate Mr. Ansari submits that pursuant to the order dated 8th June, 2023, he had intimated the parties on WhatsApp as well as on email. However, he has not received instructions from the applicant. He therefore, seeks discharge. He is however willing to assist the Court in passing the orders in the interest of his client.
2. None of the parties are present today. However, I have perused the papers and proceedings before me.
3. The present Miscellaneous Civil Application is filed by the applicant-wife under section 24 of the Civil Procedure Code, 1908 to transfer R.C.S. No. 582 of 2016 which is pending before the 15th Civil Judge Senior Division, Pune to Civil

Judge Senior Division, at Niphad, District :Nashik.

4. The Applicant's case is that her marriage was solemnised on 6th February, 2011 at Yeola, Nashik. During her stay at the matrimonial home she was subjected to various acts of Domestic Violence by the Respondent. On 31/5/2012 and 5/12/2013 respectively, two daughters were born out of wedlock. The applicant was forced out of the matrimonial home and is compelled to stay at her paternal home. Despite efforts to solve the disputes, the Respondent refused to stop ill-treatment. The Applicant filed complaint under Protection of Women from Domestic Violence Act, 2005 before the JMFC Court at Yeola, Nashik viz. Case No. 482 of 2014 and cases under section (u/s) 498A IPC vide case No. 213 of 2017 and u/s 125 Criminal Procedure Code No. 92 of 2018 and recovery application No. 304 of 2017 before the Yeola Court Nashik. The Applicant received a notice dated 17th March 2016 stating that the Respondent had uttered triple talak as per the Muslim Personal Law in response to which the Applicant stated that the same is invalid and illegal. Thereafter, the Respondent filed a R.C.S. No. 582 of 2016 for declaring the triple talak (divorce) valid before Civil Judge Senior Division, 15th Court at Pune.

5. The learned Counsel for the applicant submitted that the Applicant is residing at paternal home at Yeola, Nashik. She has no source of income and is totally dependent on her parents. She is unable to travel to Pune as she has to nurture her two daughters. Besides, she has no one to look after her two minor daughters when she has to travel to Pune each time she is required to remain present in Court. The distance from Pune to Yeola is around 250 kms. would take around 8 to 10 hours to and fro and cause undue hardship and expense. The Applicant who does not know anyone in Pune is also concerned of her physical abuse when she would come to attend court. Consequently, he submitted that the transfer Application be allowed.
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 vs. Kumar Sanjay** reported in (2001) 10 SCC 41: AIR 2002 SC 396 and **N.C.V. Aishwarya vs. A.S. Saravana Karthik Sha** reported in 2022 SCC OnLine 1199 that in matrimonial disputes, it is the 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.

7. In the light of the law laid down in the aforecited decisions, the pleadings and materials on record and the totality of the facts and circumstances of this case, particularly that not only will the Applicant have suffer undue hardship herself but also have considerable inconvenience to travel with some companion besides traveling with two daughters would cause tremendous inconvenience and hardship. Consequently, 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.
8. In view of the above I allow the transfer Application as follow:
- (i) The proceedings and application made in R.C.S.no. 582 OF 2016 pending before the Civil Judge Senior Division, at Pune be stayed pending transfer; and be transferred to the Civil Judge Senior Division, at Niphad Dist. Nashik.
 - (ii) The Registry shall forward a copy of this order to the Civil Judge Senior Division, Pune, with instructions to forthwith transmit all the records of R.C.S. No. 582 OF 2016 between the Respondent and Applicant to the Civil Judge Senior Division, at Niphad Dist. Nashik preferably within 4 weeks from the receipt of this order.
 - (iii) The Civil Judge Senior Division, at Niphad Dist. Nashik

shall on receipt of the records of R.C.S.no. 582 OF 2016, fix a date preferably within 3 weeks 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.]