

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

MISCELLANEOUS CIVIL APPLICATION NO. 76 OF 2022

Sau. Prachi Abhijit Gadhave. ... Applicant
v/s.
Dr. Abhijeet Ashok Gadhave. ... Respondent

...
Ms. Yogita A. More, for the Applicant.

Mr. Vinod P. Sangvikar a/w. Ms. Namrata Vora, for Respondent.

...

CORAM : KAMAL KHATA, J.

DATED : 11TH JULY 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 Marriage Petition (M.P.) No. 1225 of 2021 filed by Respondent Husband before the Civil Judge Senior Division, Addl. C.J.M. Pune to Civil Judge Senior Division, Omerga, Osmanabad.
2. The Applicant's case is that marriage was solemnized on 1/7/2018 at Barshi, Dist. Solapur. Due to matrimonial differences, the applicant is residing with her parents at Omerga, Dist. Osmanabad since 1/7/2020. On 4/8/2021 the applicant filed Criminal Application with Omerga Police Station, Osmanabad being FIR No. 462/2021 under section 498A, 323, 504, 506, 34 of

the Indian Penal Code against the respondent and her in-laws. On the other hand, Respondent filed a Hindu Marriage Petition No. 1225 of 2021 before the Civil Judge Senior Division, Pune on 6th August, 2021 for divorce under section 13(1)(ia) of the Hindu Marriage Act. The applicant has, therefore, filed the present miscellaneous civil application seeking transfer of proceedings.

3. Learned Counsel for the applicant submits that distance between Omerga, Osmanabad to Pune is around 350 km. and it would take around 16 hours to travel to and fro. It is submitted that she is apprehensive of traveling alone from Omerga to Pune which is an overnight journey. The mother and father are middle aged. It is submitted that the father is suffering from blood pressure and heart problems and he cannot travel along with the applicant. It is submitted that the applicant apprehends physical assault or abuse by the respondent/in-laws, when she would attend court at Pune and therefore, would require someone to accompany her for each court date. She accordingly submits that she will suffer undue hardship, inconvenience and expense to attend the court at Pune.

4. On the other hand, learned Counsel for the respondent submits that the application is ill-founded and taken out only with a view to harass the respondent. It is submitted that the applicant

is working with a Software Company in Pune city. It is further submitted that there is private transportation available. It is also submitted that the allegations made with regard to the in-laws are totally baseless and unfounded. It is further submitted that the applicant is well-educated and has completed education in computer software and is working at Mahindra Tech company. It is accordingly submitted that this application should be rejected.

5. Having heard both counsel I perused the papers and proceedings. The Court record evinces that this Court had appointed a mediator to settle the matter between the parties on 23rd March, 2022 which apparently failed. Having perused the orders in this matter, I came across an order dated 5th January, 2023 recorded that the applicant is residing in Pune. In another order dated 19th January, 2023 the respondent's statement was recorded that the applicant is working in Pune. The applicant has filed an affidavit dated 2nd February, 2023 in which it is stated that she is working with a company called Persistent Systems Limited based in Pune from 6th July, 2022 and carries on work from her is staying at her parent's house at Omerga.

6. By an Order dated 24th March, 2023, this Court recorded that the applicant seeks instructions in respect of the present application seeking transfer and was adjourned on 3rd April,

2023. On 30th June, 2023, this Court called upon the learned Counsel for both the parties to settle the matter and was adjourned to 3rd July, 2023.

7. On 6th July, 2023, the applicant was asked to remain present in the court to consider settlement. The respondent who was present on that day was also asked to remain present today. However, though the respondent is present today, the applicant has failed to remain present.

8. By order dated 14th July, 2022, the proceedings vide R.C.C. No. 289 of 2021 pending before the JMFC, Omerga, District Osmanabad arising out of C.R. No. 462 of 2021 has been quashed and set aside qua the applicants therein. It was observed by the Court that the applicants were falsely implicated to pressurize the husband and his family and that those proceedings were a sheer abuse of process of law.

9. On the other hand, the Respondent is also a doctor and therefore, his patients would suffer on account of his absence.

10. The Apex Court in the case of ***N.C.V. Aishwarya v. A. S. Saravana Karthik Sha reported in 2022 SCC OnLine 1199*** in para-9 has held that -

“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 life. 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."

11. In my view considering all the aspects of this case, it *prima facie* appears that the applicant has filed this application merely to harass the respondent. This Court has given the applicant three opportunities including an opportunity to appear and consider settlement which too for the reasons best known to her she has ignored/avoided and no reasons have been forthcoming from her Advocates as well.

12. Be that as it may, in my view, considering the conduct of the applicant as well as the circumstances pleaded for this transfer

application, she has not made any case for transferring the Petition.

13. The application is rejected.
14. All concerned to act on the authenticated copy of this order.

(KAMAL KHATA, J.)