

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

MISCELLANEOUS CIVIL APPLICATION NO. 111 OF 2023

Priyanka Srikant Kamurti	.. Applicant
v/s.	
Srikant Siddheshwar Kamurti	.. Respondent

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Ms. Gauri Shah for the applicant.

Mr. Vivek N. Machha for the respondent.

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CORAM : KAMAL KHATA, J.

DATED : 18TH JULY 2023.

P.C. :

1. This Miscellaneous Civil Application is filed by the Applicant wife under section 24 of the Civil Procedure Code 1908, for transfer of H.M.P. no.923/2018 filed by the Respondent husband from Civil Judge, Senior Division, Thane-Link Court Bhiwandi to Family Court, Solapur.

2. The Applicant's case is that the marriage took place on 26th December 2013. A boy was born out of the said wedlock on 25th February 2015. On account of marital discord, the applicant is staying separately with her parents. On 21st November, 2018 the Respondent filed Hindu Marriage

Petition No.923/2018 against the applicant for the restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955 before the Civil Judge, Senior Division, Thane-Link Bhiwandi. On 7th July, 2022 marriage petition was filed before the Family Court at Solapur by the applicant.

3. Learned counsel for the applicant submits that the applicant-wife is residing with her parents. she has a 7 year old son to look after. It is pleaded that she has no source of income. The applicant is apprehensive that the respondent and his family may through their contacts harm her physically. The distance between Solapur to Bhiwandi is around 425 kms., which would take 10 to 11 hours one way. It is submitted that currently she has taken up a job on project work basis and though the office is in Airoli, she is working from home. It is stated that it would be difficult for to leave her job and attend the court matters on the dates when she is called and she would also apprehend that she would lose her job. The respondent-husband on the other hand is studying law and managing the family estate and business at Bhiwandi. The respondent is well placed and would not have any inconvenience to travel.

4. On the other hand, learned counsel for the respondent submits that the applicant has suppressed orders of this court as well as the fact that she has been working for a company situated at Airoli. The learned counsel for the respondent submitted that applicant-wife is an architect and working on project basis and she had wrongly pleaded that she was not working and had no independent source of income. It is submitted that the respondent is willing to give travel expenses as well as lodging expenses to the applicant. Learned counsel also submitted that they have made a similar application under the Guardianship and Wards Act, 1890, which is pending adjudication by this court. Learned counsel also referred to the order dated 27th October 2021 of this court turning down the application seeking transfer of proceedings based on the same conditions. It is submitted that the respondent is also not given any access of their son. Learned counsel accordingly submits that the application should be rejected.

5. Learned counsel for the applicant submits that by order dated 27th October, 2021 should not be read in isolation as it was sought in the application in the petition for restitution filed by the respondent which was eventually withdrawn. It is submitted that all orders obtained therein would stand

nullified on account of the withdrawal once a Petition is withdrawn. It is submitted that the respondent has not paid any interim maintenance nor taken any responsibility of the child so far. It is also submitted that the respondent made an application in the Family Court at Solapur for access of the son every Friday at 11:00 a.m. to 2:00 p.m. it is therefore submitted that there would be no prejudice cause to the respondent to travel Solapur to attend the matter, if the matter is so transferred.

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 reported in (2001) 10 SCC 41 : AIR 2002 SC 396*** and ***N.C.V. Aishwarya v. 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 my view considering the facts of this case, where the respondent has made an application to meet the son every friday would by itself be sufficient ground to allow this application inasmuch as there would be no inconvenience as

such caused to the respondent who has volunteered to come to Solapur to meet the son. In normal circumstances the judgement passed by this court on 27th October 2021 would be binding. Given the change of circumstances viz. the respondent making an application to meet the son and the law in the case of *NCV Aishwarya (supra)*, I am inclined to grant this application and pass the following order;

- (i) Application is allowed in terms of prayer clauses (a).
- (ii) The proceedings and application made in H.M.P. No.923/2018 pending before Civil Judge, Senior Division, Thane, Link Court, Bhiwandi be stayed pending transfer; and be transferred to Family Court, Solapur.
- (iii) The transfer may be effected within a period of four weeks and upon receipt of the papers and proceedings the Family Court, Solapur, shall give notice to the parties, preferably within three weeks, to proceed with their respective matters.
- (iv) All concerned to act on the authenticated copy of this order.

(KAMAL KHATA, J.)