



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

MISC. CIVIL APPLICATION NO. 181 OF 2021

Hasina Jamir Fakir

...Applicant

V/s.

Jamir Shabbir Fakir

...Respondent

Mr. Zaid Qureshi, Advocate for Applicant.

CORAM : ABHAY AHUJA, J.
DATE : 29th SEPTEMBER, 2023

PC. :

1. This is an application filed under Section 24 of the Code of Civil Procedure, 1908 (the “CPC”), by Applicant-wife seeking to transfer the Regular Civil Suit bearing No. 1085 of 2019 filed by the Respondent - husband for restitution of conjugal rights before the Civil Court, Osmanabad to the Family Court, Pune.

2. Mr. Qureshi, learned Counsel for the Applicant would submit that although the Respondent had been served, he is neither present nor represented.

3. He would submit that the marriage between the Applicant and the Respondent was solemnized on 3rd May, 2018 at Mauje Kait Sawargaon, Taluka Tuljapur, District Osmanabad according to the

Muslim rituals and ceremonies.

4. Learned Counsel would submit that soon after their marriage, parties started residing together at Osmanabad in the house of the Respondent. Thereafter, out of the said wedlock, there were two children born: son Rehan was born first and later daughter Suhana was born. At the time of filing the Application, son was 10 years old and the daughter was 7 years old. He would submit that since the Applicant was subjected to cruelty by the Respondent and his family from time to time and also at the hands of the brothers of the Respondent in his absence, the Applicant was brought by her brother to stay in her paternal house at Pune.

5. Learned Counsel submits that the Applicant has been constantly subjected to threat to her life and the Respondent also came to reside with the Applicant in Pune, when threat calls were also received by the Applicant and the Respondent, after which Respondent went back to his house at Osmanabad.

6. It is submitted that on 20th August, 2016, the elders of both the families tried to settle the matter by mediation, however, the said

mediation failed and therefore, the Applicant had no option but to stay in Pune for the sake of the education and future of the children. It is submitted that since 2018, the Respondent is not residing with the Applicant and their children and not even kept any communication with them. It is further submitted that the Respondent has even remarried in December, 2019 to some other lady even without informing the Applicant. Thereafter on 21st August, 2019 the subject suit for restitution of conjugal rights was filed by the Respondent.

7. Learned Counsel would submit that thereafter the Applicant-wife has filed for divorce under the Family Courts Act as well as under Dissolution of Muslim Marriage Act against the Respondent-husband in January, 2020. Thereafter, this Application has been filed on 6th March, 2020 for transferring the said suit to Pune.

8. Mr. Qureshi, would submit that since the Applicant is residing with her children in Pune, who are pursuing their education in Pune and as on the date of this application, the son is studying in 4th standard in Muktangan English Medium School and daughter is studying in Mandadeep High School, it would not be possible for her to travel to Osmanabad for the restitution matter filed by the Respondent

against her. It would take almost 12 hours one way and the Applicant cannot afford to go to Osmanabad for the matter. He would submit that the Applicant is dependent on her parents for her upkeep as well as upkeep of her children and it is not financially possible for her to attend the proceedings before the Osmanabad Court. He would submit that therefore it would not only be inconvenient for the wife to attend the proceedings in Osmanabad but also cause undue hardship.

9. Learned Counsel would submit that, on the other hand, the Respondent is into joint family agriculture and has other family members to look after his business in Osmanabad and therefore, there would be no inconvenience for him to travel to Pune, if the matter is transferred to Pune.

10. Learned Counsel also submits that it is also in the interests of justice if both the Restitution of Conjugal Rights petition as well as Divorce Petition are heard together in order to avoid conflicting decisionS on the same set of facts. He therefore, urges this Court to transfer the subject suit to the Family Court at Pune.

11. The Hon'ble Supreme Court in the case of **N.C.V. Aishwarya Vs. A.S. Saravana Karthik Sha, SCC Online SC 1199 (2022)** has clearly observed that in matters of this nature, the convenience of the wife is to be given importance. 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 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 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)

12. I have heard learned Counsel, perused the application alongwith annexures and also observe that the Respondent is neither present himself nor represented despite service. Therefore, the submissions made on behalf of the wife have gone unchallenged. In the

circumstances, considering the inconvenience and hardship of the Applicant-wife, I am of the view that, ends of justice would be served if this Regular Civil Suit No. 1085 of 2019 filed by the Respondent-Husband for Restitution Conjugal Rights in the Civil Court Osmananbad is transferred to Family Court at Pune and both the Divorce Petition No. 198 of 2018 filed by the Applicant- wife against the Respondent – husband and Civil Suit No. 1085 of 2019 are heard together.

13. Application is allowed in the above terms. No order as to costs.

14. It is made clear that any observation(s) 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 two petitions which are to be tried and decided on their own merits, uninfluenced by the said observation(s).

(ABHAY AHUJA, J.)