



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

MISC. CIVIL APPLICATION NO. 98 OF 2023

Rasika Raju Tonde

...Applicant

V/s.

Raju Baban Tonde

...Respondent

Ms. Grishma Lad for the Applicant.

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

PC. :

1. On 25th August, 2023, following order was passed:-

“1. This is an application seeking transfer of divorce proceedings viz. Petition-A No.854 of 2022 at Family Court, Pune to Civil Judge, Senior Division, Kalyan, Thane.

2. Ms. Shruti Mishra, learned counsel for the Applicant would submit that the Applicant-wife and the Respondent-husband have been married for more than 10 years and have a daughter aged 9 years from the wedlock who is residing with the mother at Kalyan. Learned counsel would submit that earlier due to the ill-treatment meted out to the Applicant, the Applicant had filed a Domestic Violence Application in the year 2019 before the Judicial Magistrate First Class, Kalyan for protection and maintenance. She would submit that the divorce petition has been filed by the husband at Pune in the year 2022. Learned counsel submits that the Respondent though served, is neither present nor represented. She would submit that the next date before the Pune Court is 8th September, 2023, which is at the stage “For filing written statement”. Learned counsel would submit that the Applicant has no source of income. The Applicant is a daily wage labourer and with the meagre source of income and a daughter to take care,

it would be rather inconvenient and cause undue hardship to the Applicant to attend to the Family Court proceedings in Pune every time the matter is listed.

3. As noted above, Respondent though served, is not present nor represented.

4. Having heard the learned counsel and having perused the application, this court is of the view that in the interests of justice the proceedings before the Family Court at Pune be stayed till the next date.

5. Accordingly, let there be an interim relief in terms of prayer clause (b) till the next date.

6. List on 29th September, 2023.

7. Let the learned counsel for the Applicant intimate this order to the Family Court at Pune.”

2. Today, again when the matter is called out, none is present for the Respondent, though served.

3. Learned Counsel for the Applicant urges this Court to allow the application in view of the arguments recorded in order dated 25th August, 2023.

4. 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 held that in matters of this nature, the convenience of

the wife has to be considered. 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)

7. Since the Respondent is neither present nor represented, the submissions made on behalf of the Applicant remain unchallenged.

8. Having heard learned Counsel and having perused the application and earlier order passed and settled law, considering the inconvenience and hardship caused to the wife, this Court is of the view that the ends of justice would be met if the Divorce Petition filed

by the Respondent – husband in Pune is transferred to the Court of Civil Judge, Senior Division, Kalyan, District Thane.

8. Accordingly, application is made absolute in terms of prayer clause (a), which reads thus:-

“a. The proceedings in P. A. No. 854 of 2022 from the file of Family Court of Pune may kindly be transferred to the Civil Judge Senior Division, Kalyan, Thane.”

9. It is made clear that any observations 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 divorce petition which is to be tried and decided on its own merits, uninfluenced by the said observations.

(ABHAY AHUJA, J.)