



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

MISCELLANEOUS CIVIL APPLICATION NO. 125 OF 2023

Pallavi Shivraj Patil

Age : 37 years, Occ : Nil,

Residing at C/o. Popat Shankar Pisal,

Ghonasi, Tal-Karad, Dist-Satara

Maharashtra.

..... Applicant

VERSUS

Shivraj Balaram Patil

Age : 42 Years, Occ: Private Job,

R/at. 1311/5, Ruchi Sadan, Panari,

Mala Rankala Tower, Shivaji Peth,

Kolhapur, Maharashtra

..... Respondent

Mr. Ravi Kadam a/w. Ms.Snehal S. Jadhav for the Applicant.

Mr.Vivek Patil a/w. Mr.Nitiraj Shirke i/b. Vivek Patil & Associates for the Respondent.

CORAM: ABHAY AHUJA, J.

DATE : 24th AUGUST, 2023

ORAL JUDGMENT :-

This application under section 24 of the Code of Civil Procedure, 1908 has been filed by the wife of the respondent for transferring the Hindu Marriage Petition No. 9 of 2022 filed by the respondent before the Family Court at Kolhapur for divorce to the Court of Civil Judge, Senior Division, Karad.

2. Mr. Kadam, learned counsel for the applicant would submit that the marriage between the applicant and the respondent was solemnized on 5th May, 2009 at Village Ghonasi, Taluka Karad, District Satara, as per Hindu rights and they have a son from the wedlock who was born on 23rd February, 2010. Learned counsel would submit that for one frivolous reason or another, the respondent would physically and mentally torture the applicant and when the applicant had come to her parents' home at Karad, the respondent has entered into another illegal marriage at Nagpur.

3. Learned counsel would submit that the applicant lives in a village which is approximately 15 – 20 kms from Karad, has a 12 year school going son, whom she has to look after and no one to escort her for travel to Kolhapur Court. Learned counsel also submits that the distance between Karad and Kolhapur is more than 70 kms one way and therefore it would be rather inconvenient for her to travel to Kolhapur to attend to the matter every time it is listed. It is submitted that the applicant has no source of income and is fully dependent on her parents for her sustenance who are working as farmers earning on daily wage basis and therefore travelling to and from Kolhapur will

also cause undue hardship.

4. Learned counsel would submit that the applicant had on 20th January 2021 lodged FIR in Talbeed Police Station, Karad against the respondent and the respondent's mother for offences under section 498-A, 494, 323, 504, 506 read with 34 of the Indian Penal Code, 1860 of which investigation is pending. Also domestic violence proceeding before the Chief Judicial Magistrate at Karad under the Domestic Violence Act, 2005 is pending. Learned counsel would submit that an application seeking maintenance before the Chief Judicial Magistrate at Karad was also filed earlier and on 14th September, 2022, the Judicial Magistrate has granted interim maintenance of Rs.7,000/- per month to the applicant and Rs.3,000/- per month to the son. Therefore, to attend the Kolhapur Court would for these reasons also not be convenient when the dates are fixed before the Magistrate at Karad.

5. Learned counsel would submit that in both the proceedings filed by the applicant, the respondent husband has already been attending the Court at Karad and it would therefore not be inconvenient for him to attend to the Family Court proceedings if they are transferred to Karad.

6. On the other hand, learned counsel for the respondent refers to the reply dated 7th August, 2023 filed on behalf of the respondent and submits that the respondent has no objection if the Family Court proceedings pending in Kolhapur are transferred to the Court of Civil Judge, Senior Division, Islampur rather than Civil Judge, Senior Division in Karad as there is already Special Civil Suit bearing No. 50 of 2021 filed by the applicant before the Court at Islampur where the applicant is seeking specific relief of partition of a land, which suit is pending.

7. Learned counsel would submit that the distance between Karad and Islampur is 40 kms which the applicant is already travelling every time when Special Civil Suit is listed for hearing since 2021. Learned Counsel would refer to the reply and submit that the distance between Kolhapur and Karad is a total of 85 kms; the distance from Kolhapur to Islampur is 45 kms. The time taken to travel from Kolhapur to Islampur and Karad to Islampur is approximately upto one hour. Therefore, it would be convenient to both the Respondent as well as applicant to travel to Islampur. Therefore if the Marriage Petition is transferred to Islampur that would not cause any inconvenience or

hardship to the applicant or to the respondent.

8. Learned Counsel would also submit that the Respondent is presently residing at Kolhapur and having no permanent job in hand and also suffers from a spinal problem and lower back issues making it inconvenient for the Respondent to travel to Karad and therefore the request for transfer to Islampur.

9. The above submissions on behalf of the Respondent have been strongly objected to by the learned Counsel for the applicant submitting that the investigation of the FIR and the proceeding under Domestic Violence Act, 2005 are pending in Karad are quite different from the subject matter in Special Civil Suit pending at Islampur. That, moreover, the distance between the Karad and Islampur is 40 km and the applicant would have to travel 15-20 km from Ghonasi village to Karad first and then 40 km to Islampur will as mentioned earlier cause not only inconvenience but also undue hardship to the applicant.

10. I have heard Mr. Kadam, learned counsel for the applicant and Mr. Patil, learned counsel for the respondent and considered the rival

contentions.

11. The facts referred to above are not in dispute. However, it is settled law that while considering the application for transfer under section 24 of the Code of Civil Procedure, 1908 filed by a wife, the convenience of the wife and hardship caused to the wife has to be of paramount consideration.

12. 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 highlighted this very aspect considering the Indian socio-economic paradigm. 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 behavioural 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)

13. The applicant-wife is staying with her parents and a 12 year old school going son at village Ghonasi, Tq-Karad which is approximately 15 to 20 kilometers from Karad. She is fully dependent on her parents for her sustenance and upkeep. The parents are daily wage farmers which suggests that the applicant's family is in state of hardly any means. There does not appear to be any other male member in the family to look after the applicant or to accompany her to the Court or to even look after her son. Admittedly the distance between Karad and Kolhapur is more than 85 kilometers, one way. There is a First Information Report lodged in Talbeed Police Station under Sections 498-A, 494, 323, 504, 506 read with 34 of the Indian Penal Code, 1860 which investigation it is submitted is pending. There are proceedings under the Domestic Violence Act, 2005 which are also pending before the Chief Judicial Magistrate at Karad. Therefore, in my view it would not only be inconvenient for the wife to travel to Kolhapur 20 kilometers plus 85 kilometers to and fro every time matter is listed in the Kolhapur Court but also cause undue hardship considering the state

of penury in which the applicant and her family appear to be in and also that she has to take care of a 12 year old school boy and his needs.

14. Although the Respondent has filed the Marriage Petition in Kolhapur, however he has given his no objection if the same is transferred to Islampur where the Special Civil Suit for specific relief of partition of land filed by the applicant-wife is pending. The matrimonial dispute related proceedings filed by the applicant wife are pending in Karad. The subject matter of the Suit filed at Islampur and the proceedings filed at Karad are different. Under Section 24 of the Code of Civil Procedure 1908, this Court can transfer any pending suit, Appeal or other proceeding to a Court competent to try or dispose the same. Under Section 19 of the Hindu Marriage Act, 1955, a petition under the said Act can be presented to a Court within the local limits of whose ordinary original civil jurisdiction either marriage was solemnized or the respondent, at the time of the presentation of the Petition, resides, or the parties to the marriage last resided together. It appears from the pleadings that the marriage between the applicant and the Respondent was solemnized at village Ghonasi, Taluka Karad as per Hindu Customs. That the applicant had returned to Ghonasi in

August-2012. The Marriage Petition No. 9 of 2022 has been filed before the Family Court at Solapur in the year 2022. Therefore, at the time of presentation of the Petition the Respondent-wife resided in Ghonasi, Taluka Karad. No where it is stated that the parties to the marriage last resided together at Islampur nor was the marriage solemnized there. Therefore, the Court at Islampur does not appear to be a Competent Court where the Marriage Petition No.9 of 2022 filed before the Family Court at Kolhapur can be transferred. Besides, the request to transfer the marriage petition to Islampur has also as mentioned above been strongly objected to by the learned Counsel for the applicant on the ground of comparative hardship and inconvenience to wife. The applicant would have to travel about 60 kms (15-20 kms from Ghonasi to Karad and about 40 kms from Karad to Islampur) if the Kolhapur proceedings are transferred to Islampur causing inconvenience and hardship to her.

15. It is settled law that the hardship and convenience of the wife has to be preferred over the convenience of the husband while deciding application/petitions under Section 24 of the Code of Civil Procedure, 1908. This view also draws support from the decision of the Nagpur

bench of this Court in the case of **Yasmeen Anjum Vs. Rashid Khan, Misc. Civil Application (TR) No.396 of 2022, (2022 SCC OnLine Bom 5099)**, where as it has been observed as under :-

“10. The settled principle of law for exercise of power under Section 24 of the Code of Civil Procedure, 1908 is that ends of justice should demand the transfer of the suit, appeal or other proceeding. That it is the undue hardship that would be caused to the wife that would be the determining factor. That in matrimonial disputes, it is the convenience of the wife which is preferred over the convenience of the husband.

11. The Hon’ble Apex Court in a recent decision (by Their Lordships Hon’ble Shri Justice S. Abdul Nazeer and Hon’ble Shri Justice J. K. Maheshwari, JJ) in the case of **N.C.V. Aishwarya ..V/s.. A. S. Saravana Karthik Sha**, dated 18.07.2022 in Civil Application No.4894 of 2022, has in paragraph 9 observed 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 behavioural 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 socioeconomic paradigm in the Indian society, generally, it is the wife's convenience which must be looked at while considering transfer."

(Emphasis Supplied)

12. In the case of **Rajani Kishor Pardeshi ..V/s.. Kishor Babulal Pardeshi, 2005 (12) SCC 237**, the Hon'ble Apex Court while considering the argument of the husband opposing the transfer on the ground that it was equally inconvenient for him to go to Satana and that he would be willing to pay the expenses for the wife's travel to Mumbai, the Apex Court held that in these type of matters, the convenience of the wife would be preferred over the convenience of the husband and accordingly transferred the proceedings pending before Mumbai Court to the Family Court at Satana, Madhya Pradesh. Paragraphs 3 and 4 of the said decision are usefully quoted as under :

"3. The husband opposes the transfer on the ground that it is equally inconvenient for him to go to Satana and that he is willing to pay the expenses for her travel to Mumbai.

4. In this type of matter, the convenience of the wife is to be preferred over the convenience of the husband. Hindu Marriage Petition No.6 of 2004, Kishor Babulal Pardeshi v. Rajani Kishor Pardeshi pending before the Court of Civil Judge, Senior Division at Panvel, Mumbai, Maharashtra is transferred to the Family Court of proper jurisdiction at Satana, Madhya Pradesh."

(Emphasis Supplied)"

16. Therefore, even though the Respondent is presently residing at Kolhapur and would have to travel 85 kms to Karad, in view of settled law as elucidated above, the convenience and hardship of the wife has to be preferred over the husband's convenience and hardship. The First Information Report, the Domestic Violence Proceedings are already pending at Karad. Transfer of the Marriage Petition pending in Kolhapur to Karad would also bring all the proceedings at one place and facilitate timely resolution of matrimonial disputes between the parties.

17. In the light of the above discussion, and after considering the arguments of the learned Counsel, this Court is of the view that ends of justice would be served if the marriage petition pending before the Family Court at Kolhapur is transferred to the Court of Civil Judge, Senior Division at Karad. The application is made absolute in terms of prayer clause (b) which reads thus :-

“b) That by an order of this Hon'ble Court the proceeding filed by the Respondent bearing Marriage Petition No.09 of 2022 before the family Court, Kolhapur for seeking divorce from the Applicant under Section 13(ia) (ib) of Hindu Marriage Act, 1955, be pleased transfer to the Learned Civil Judge, Senior Division, Karad, Maharashtra”.

18. Further considering the submissions on behalf of the respondent and perusal of the reply where it is stated that the respondent suffers from back issues, let the Court at Karad permit the Respondent to attend Court proceedings by video conferencing, if such facility is available, on the date(s) where his physical presence is not required. Similar facility may also be extended to the applicant.

19. Application is allowed in the above terms and disposed as such. Parties to bear their own costs.

20. It is made clear that any observation 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 Marriage Petition which is to be tried and decided on its own merits uninfluenced by the said observations.

[ABHAY AHUJA, J.]