

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

MISCELLANEOUS CIVIL APPLICATION NO. 99 OF 2023

Sunita Jalindar Naval	.. Applicant
v/s.	
Jalindar Raosaheb Naval & Anr.	.. Respondents

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Ms. Swatantri Waghmare for the Applicant.
Mr. Vilas Tapkir for the respondent.

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CORAM : KAMAL KHATA, J.

DATED : 8TH JUNE 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. A/1421 of 2022 which is pending before the Family Court No.3, Pune to Family Court Ahmednagar.

2. The Applicant's case is that after her marriage on 7th May 2006 at Ahmednagar. From the wedlock they have two daughters born on 5th February 2008 and 25th April 2012. The Respondent filed a petition No. A/1421 of 2022 for divorce and permanent custody of their children on 11th July 2022 under section (u/s) 13 (1) (ia) & 26 of the Hindu Marriage Act, 1955. On 26th September

2022 the Applicant filed a petition for maintenance. Thereafter on 15th December 2022 the Applicant filed an FIR 0964 of 22 on behalf of her daughter invoking POSCO against the Respondent. On 3rd February 2023 after recording the statement of the victim the Applicant was taken into police custody.

3. The learned counsel for the Applicant submitted that the Applicant is residing at paternal home at Ahmednagar. She is a poor woman living with her old parents and two daughters and is unable to travel to Pune as she has no source of income and is dependent on cousins and relatives to reach Court at Pune. Besides, she has to bear the expenses of the person/s travelling with her to Pune which is an additional burden. The distance from Ahmednagar to Pune, which is around 123 kms, would take considerable time, which causes undue hardship and expense. On the other hand the Respondent is a Washer at the Coman Hospital of the Indian Army and has a settled job. Consequently, she submitted that the transfer Application be allowed.

4. 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 SC 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.

5. In the light of the law laid down in the aforecited decisions, the pleadings and materials on record and the totality of the facts and circumstances of this case, particularly that not only will the Applicant have suffer undue hardship herself but also have considerable inconvenience to travel with some companion leaving the children with the aged parents for a considerable long duration of time each time she that she would be required to attend Court. Consequently, I am inclined to exercise the discretionary powers of this Court under Section 24 of the Code of Civil Procedure and allow the application for transfer.

6. In view of the above, I allow the transfer Application as follows:

- i. The proceedings and application made in M.P. No. A/1421 of 2022 pending before the Family Court No. 3 at Pune be stayed pending transfer; and be transferred to the Family Court at Ahmednagar.

- ii. The Registry shall forward a copy of this order to the Family Court No. 3 Pune, with instructions to forthwith transmit all the records of M.P No. A/1421 of 2022 between the Respondent and Applicant to the Family Court, Ahmednagar preferably within 4 weeks from the receipt of this order.
 - iii. The Family Court, Ahmednagar shall on receipt of the records of M.P. No. A/1421 of 2022, fix a date preferably within 3 weeks and issue notice to the parties for proceeding with the matter.
7. All concerned to act on the authenticated copy of this order.

(KAMAL KHATA, J.)