



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

MISCELLANEOUS CIVIL APPLICATION NO. 145 OF 2022

Mr. Sunny Savitri Bajaj	.. Applicant
v/s.	
Mrs. Komal Sunny Bajaj	.. Respondent

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Mr. Uday Warunjikar a/w Jenish Jain for the applicant.

Ms. Reshmarani J. Nathani for the respondent.

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CORAM : KAMAL KHATA, J.

DATED : 27th JULY 2023.

P.C. :

1. This Miscellaneous Civil Application is filed by the applicant husband under Section 24 of the Civil Procedure Code 1908, for transfer of Marriage Petition No. A-3107/2021 filed by the Respondent wife at Family Court Bandra for Restitution of Conjugal Rights from Family Court, Bandra, Mumbai to Family Court, Pune and for transfer of Domestic Violence case no.66/2020 from Metropolitan Magistrate, Vikhroli, Mumbai to the Judicial Magistrate First Class (J.M.F.C.), Pimpri, Pune,
2. The Applicant married the Respondent on 10th December 2017 at Pimpri, Pune. A son was born on 30th January, 2019 out of wedlock. On 17th August 2021, the applicant filed an

application under section 312, 323, 504, 506 (2), 509 r/w 34 of the Indian Penal Code and under section 7 of the Persons with Disabilities Act, 2016 before the J.M.F.C. at Pimpri, Pune bearing Criminal Miscellaneous Application No. 987 of 2021. On 27th August 2020, the Respondent-wife filed a complaint for mental and physical harassment under Protection of Women from Domestic Violence Act, 2005 against the respondent herein bearing No. 66 of 2020 before the Metropolitan Magistrate 73rd Court, Vikhroli, Mumbai. On 25th October, 2021 the respondent-wife filed a Marriage Petition No.A-3107 of 2021 at Family Court Bandra seeking a decree of Restitution of Conjugal Rights. On 28th February 2022, the applicant's mother filed a complaint against the respondent wife for domestic violence under Sections 12, 18 to 20, 22 & 23 of Protection of Women from Domestic Violence Act, 2005 bearing application No. 281 of 2022.

3. Learned counsel for the applicant urged that the applicant is disabled person having 46% disability. He submits that in view of this physical impairment and cerebral palsy with quadriparesis which affect the Permanent Disability in relation to all his four limbs which is non progressive and not likely to improve, he is unable to travel to Mumbai and therefore, seeks transfer of the proceedings pending before

the Metropolitan Magistrate, Vikhroli, Mumbai to J.M.F.C. at Pimpri, Pune. Learned Counsel for the applicant submitted that he is willing to pay the travel charges to the respondent-wife and on the above grounds the transfer application be allowed.

4. The learned Counsel for the respondent-wife submits that the applicant is working, he can therefore travel. It is submitted that it would be inconvenient for the respondent to travel along with her child. Moreover, she has no independent source of income, and she would also need a companion to travel to Court with or without the child. It is submitted that the balance of convenience is in her favour and that the application should be rejected.
5. It is further the case of the respondent that the applicant has approached the court with unclean hands and with mala fide intention and under the garb of Disability Certificate sought transfer of Petition. It is submitted that the date on the disability certificate is 5th October, 2016 but the said certificate has been issued on the basis of The Rights of Persons with Disabilities Act, 2016, which came in force in 2017, and guidelines S.O. 76(E) dated 4th January 2018 hence the application is misleading. It is not the case of the respondent that wrong information was provided to get the

benefit he didn't deserve. I find no fault in the validity of the certificate. It can be seen that in view of the fact that the Applicant had applied for the said certificate in 2021 under the new UDID scheme and it was issued in pursuance of an existing disability certificate dated 5th October 2016 previously issued to the applicant by the Government of Maharashtra. Therefore, the said certificate was validly issued under the RPwD Act, 2016 and the said guidelines. As regards the issuing date on the latest disability certificate being same as the date on the original disability certificate, in my opinion, seems to be a fault on the part of the department issuing the certificate and not that of the applicant. It is clear that the period from 1991 to 2021, which was the year in which the Applicant applied for the latest disability certificate, comes to 30 years which in fact is written in the application for the certificate. Therefore, there is no discrepancy in the age of the Applicant as submitted by the Counsel for the Respondent.

6. Both applicant and respondent were asked to remain present in court to consider settlement which failed. The applicant's physical disability was visible. I was also informed that the mother of the applicant is suffering from cancer. It will cause tremendous inconvenience and

hardship to the applicant to travel alone with his disability and will necessarily have to arrange for a companion for each date in court. He is not only required to take care of his own health but also that of his mother. The applicant's mother has filed a case of domestic violence against the respondent -wife. On perusal of the reply, I find that the wife has taken contradictory stands whereas on the one hand she has filed complaints against the applicant and his mother for domestic violence and on the other hand has sought restitution of conjugal rights. Considering that the wife is physically fit she would be able to travel, the child can in my view be taken care of by the wife's parents who are in any way, given the circumstances, taking care of the child and their daughter.

7. In the aforestated facts and circumstances, the balance of convenience tilts in favour of the applicant.
8. In view thereof, I am inclined to allow this transfer application and pass the following order:
 - (i) Application is allowed in terms of prayer clause (a).

(ii) The proceedings being Domestic Violence Case No. 66/2020 pending before the Metropolitan Magistrate 73rd, Court, Vikhroli, Mumbai, and Marriage Petition no.A-3107/2021 pending before Family Court, Bandra, be stayed pending transfer; and be transferred to J.M.F.C. at Pimpri, Pune and so also the Marriage petition from Family Court Bandra to Family Court Pune.

(iii) The transfer may be effected within a period of four weeks and upon receipt of the papers and proceedings the JMFC at Pimpri, Pune, and Family Court at Pune, shall give notice to the parties, preferably within three weeks, to proceed with their respective matters.

(iv) It is clarified that the applicant shall pay to the respondent a sum of Rs. 1500/- by way of travel charges when she is required to attend the Court. The applicant shall transfer the money through electronic mode on each day the court requires her attendance. The Court may also consider granting video conferencing facility to the respondents if applied for and in the event her physical presence is not absolutely necessary.

(v) The Family Court Pune shall club and hear the stated proceedings viz. (a) Complaint No. 66 of 2020 under

Domestic Violence Act, 2005 filed by the respondent from Metropolitan Magistrate 73rd, Court, Vikhroli, Mumbai, (b) Marriage Petition No. 3107 of 2021 filed by the respondent at Family Court Bandra and (c) Criminal Miscellaneous Application No. 281 of 2022 under Domestic Violence Act 2005 filed by the Applicant's mother before Judicial Magistrate First Class at Pimpri, Pune.

(vi) All concerned to act on the authenticated copy of this order.

(KAMAL KHATA, J.)