

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

MISCELLANEOUS CIVIL APPLICATION NO. 176 OF 2022

Mrs. Sana Tasdiquddin Bhatker	.. Applicant
v/s.	
Tasdiquddin Moinuddin Bhatker	.. Respondent

...

Mr. Raees Saad Kazi for the applicant.
Mr. Khaja Hasanuddin for the respondent.

...

CORAM : KAMAL KHATA, J.

DATED : 17TH JULY 2023.

P.C. :

1. This miscellaneous civil application under section 24 of the code of civil procedure 1908 is for transfer of Regular Civil Suit no.97/2021 from Civil Judge (Junior Division) at Vasai to Kalyan.

2. The applicant's case is that the marriage took place at Kalyan on 9th March 2013. A son was born out of wedlock on 4th December 2013. On account of marital discord, the applicant left the matrimonial home in July 2017. However, in December 2017, the applicant resumed co-habitation. On ac-

count of physical assault by the respondent, FIR was filed on 24th December 2018 at Nalasopara Police Station.

3. The respondent gave notice for divorce on 30th August 2020, 8th October 2020 and 17th November 2020 seeking divorce i.e. pronouncement of Talaq as per the Islamic rituals. The replies were sent by the applicant to the said notices on 15th September 2020, 21st October 2020 and 27th November 2020.

4. On 24th February 2021, the respondent filed a Regular Civil Suit for divorce before the Civil Judge (Junior Division) at Vasai being Regular Civil Suit no.97/2021.

5. Learned counsel for the applicant submits that the applicant is unable to travel as she would face great hardship to travel to Vasai with or without her minor son and even with or without a companion. It is submitted that she has no source of income and is dependent upon her parents for her livelihood. She is forced to stay with her parents at Kalyan. She has not received any maintenance from the respondent till date. Besides, on account of the respondent's violent behaviour and having been assaulted on several occasions,

she fears travelling to Vasai alone, and therefore, would need a companion along with her. In these circumstances, the learned counsel for the applicant seeks transfer of the application.

6. The learned counsel for the respondent, on the other hand, submits that the applicant has suppressed the material information from this Court. It is submitted that Section 498-A application is pending in the Court at Vasai and the applicant did visit the court. He submitted that the parents of the respondent are also old and he requires to take care of them. It is therefore submitted that the application for transfer be rejected.
7. 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 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.

8. In my view travelling with or without the minor child itself would be sufficient ground to allow transfer of the proceedings inasmuch as it would cause tremendous anxiety to a mother. Besides apprehension of physical abuse is yet another reason for granting the same since the applicant would have to travel with a companion to attend court each date. Moreover, the applicant has not been paid any maintenance either for herself or for the child and the travel expense with a companion would certainly cast an extra burden on her finances. In view of the above, I am inclined to allow this application and pass the following order;

(i) Application is allowed in terms of prayer clause (a).

(ii) The proceedings and application made in Regular Civil Suit No.97/2021 pending before the Civil Judge, Junior Division at Vasai be stayed pending transfer; and be transferred to Kalyan Court at Kalyan.

(iii) The Registry may forward a copy of this order to the Civil Judge, Junior Division at Vasai, with instructions to forthwith transmit all the records of Regular Civil Suit No.97/2021 between the Respondent and Applicant to the Kalyan Court at Kalyan preferably within 4 weeks from the receipt of this order.

(iv) The Kalyan Court at Kalyan on receipt of the records of Regular Civil Suit No.97/2021, may fix a date preferably within 3 weeks and issue notice to the parties for proceeding with the matter.

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

(KAMAL KHATA, J.)