



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

MISCELLANEOUS CIVIL APPLICATION NO.171 OF 2022

MRS.HARSHADA OMKAR DAHIWADIKAR)...APPLICANT

V/s.

MR.OMKAR SANAD DAHIWADIKAR)...RESPONDENT

Mr.Abhay Parab a/w. Mr.Digvijay Rane, Advocate for the Applicant.

None for the Respondent.

CORAM : ABHAY AHUJA, J.

DATE : 27th SEPTEMBER 2023

PC. :

1. By this Application filed under Section 24 of the Code of Civil Procedure, 1908, the Applicant-wife is seeking transfer of the proceedings for restitution of conjugal rights filed by the Respondent-husband before the Civil Judge Senior Division at Vaduj, Satara, to the Court at Vasai.

2. Mr.Abhay Parab, learned Counsel for the Applicant-wife, would submit that although the service has been effected on the Respondent-husband, however, the Respondent-husband is neither present nor represented.

3. Learned Counsel would point out that the marriage between the Applicant-wife and the Respondent-husband was solemnized at Pune on 6th December 2019 and after marriage, they resided at Satara till 22nd December 2019. Thereafter, the couple shifted to Mhada Colony, Virar (West), where the Respondent-husband is residing even today. Mr.Parab, learned Counsel for the Applicant-wife, would submit that the Respondent-husband and his family members from the beginning started to harass the Applicant-wife although she was trying her best to please everyone. That, the family members of the Respondent-husband used to harass, torture and insult the Applicant-wife for more dowry and also physically assault her. Finally, around 22nd March 2020, the Applicant-wife was not even allowed to enter the matrimonial house by the Respondent-husband and since then, she has been residing with her parents. Learned Counsel would submit that on 18th July 2020, the Applicant-wife has filed the proceedings under the Protection of Women from Domestic Violence Act, 2005, and on 13th October 2020, First Information Report (FIR) under Section 498A, 323 and 504 of the Indian Penal Code, 1860, has been lodged in Nallasopara Police Station. He would submit that the Respondent-husband and his family members have also obtained anticipatory bail in the matter. That, thereafter, on 31st October 2020, the Respondent-husband has filed

Marriage Petition No.124 of 2020 under Section 9 of the Hindu Marriage Act, 1955, for restitution of conjugal rights before the Court of Civil Judge Senior Division, Vaduj, Satara. He would submit that the summons in respect of the said Petition was received by the Applicant-wife around end of March 2021, after which, the Applicant-wife has filed Divorce Petition against the Respondent-husband before the Court of Civil Judge, Senior Division, Vasai on 24th November 2021.

4. Mr.Parab, learned Counsel for the Applicant-wife, would submit that the relations between the Applicant-wife and the Respondent-husband have no future, and therefore, the Applicant-wife is keen on seeking a divorce. He would submit that although the Applicant -wife is qualified as a B.Sc. Graduate, she is residing with her parents and her father is jobless and mother is housewife. He would submit that the Applicant-wife is also practically jobless except that she is at the moment attending a pathology clinic for two hours and earning Rs.300/- to Rs.400/- per day. Learned Counsel submits that the financial condition of the Applicant-wife is very poor, and that the distance between Vaduj and Vasai is about 400 kms. one way and a travel time of 7 to 8 hours. Therefore, travelling to Vaduj every time the matter is listed there, may not only cause inconvenience but also undue

hardship to the Applicant-wife. He would submit that, in any case, the Divorce Petition has been filed by the Applicant-wife in Vasai, and therefore, it would be in the interests of justice if the Petition for restitution of conjugal rights is transferred to the same Court where the Divorce Petition is pending. Learned Counsel, therefore, prays that this Application be allowed.

5. On 20th September 2023, this Court passed the following order :

“1. Pursuant to order dated 4th September, 2023, Mr. Parab, learned counsel for the Applicant-wife seeks to file affidavit of service in the matter. Learned counsel submits that although an attempt was made to file affidavit of service, however, the registry has kept it pending. Registry to accept the same.

2. Let a hard copy of the same also be filed. Registry also to accept the dates and events filed by the learned counsel for the Applicant.

3. List on 27th September, 2023, for passing orders.

4. Ad-interim order granted earlier to continue till the next date.”

6. Learned Counsel has filed affidavit of service which indicates that service to the Respondent-husband has been effected. The Remarks column from the cause-list also indicates that on an earlier occasion, the Respondent-husband has refused to accept service. It appears that the Respondent-husband is not interested in attending to the matter here, despite service. As such, the submissions made on behalf of the Applicant-wife remain unchallenged.

7. Having heard the learned Counsel and having perused the Application and considering the inconvenience and hardship of the wife as narrated above, this Court is of the view that ends of justice would be served if the Marriage Petition No.124 of 2020 filed by the Respondent-husband before the Civil Judge Senior Division, Vaduj, Satara, is transferred to the Court of Civil Judge Senior Division at Vasai.

8. The Hon'ble Supreme Court in the case of **N.C.V. Aishwarya Vs. A.S. Saravana Karthik Sha**¹ has very clearly observed that in such matters, the convenience of the wife is 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)

¹ SCC Online SC 1199 (2022)

9. In the circumstances, let Marriage Petition no.124 of 2020 filed by the Respondent-husband under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights, pending before the Civil Court Senior Division, Vaduj, Satara be transferred to the Court of Civil Judge Senior Division at Vasai, Palghar.

10. The Application, accordingly, stands disposed.

11. It is made clear that any observation(s) 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 Petitions for divorce or for restitution of conjugal rights which are to be tried and decided on their own merits uninfluenced by the said observations.

(ABHAY AHUJA, J.)