

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

MISCELLANEOUS CIVIL APPLICATION NO. 368 OF 2022

Mrs. Monika Sandeep Chahande	.. Applicant
v/s.	
Mr. Sandeep Moreshwar Chahande	.. Respondent

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Mr. Moorthy Acharya for the Applicant.

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CORAM : KAMAL KHATA, J.

DATED : 7TH 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/489 of 2021 which is pending before the Family Court, Nagpur to Civil Judge Senior Division, Panvel District: Raigad.

2. The Applicant's case is that after her marriage on 1st March 2020 at Nagpur the Respondent refused to cohabit with the Applicant. Consequently she filed a Case being D.V. No. 796 of 2021 and Criminal M. A. No. 796 of 2021 which are pending before the JMFC, Panvel against the Respondent on 2nd August 2021. The Applicant also filed an application u/s 9 of the Hindu Marriage Act, for restitution of Conjugal Rights being Marriage

Petition No. 422/2021 before the Civil Judge Senior Division, Panvel, District: Raigad which is pending. On the other hand the Respondent has filed a Divorce Petition u/s 13(1)(i-a) of the Hindu Marriage Act, bearing no. H. M. P. No. A/489 of 2021 before the Family Court at Nagpur.

3. The learned counsel for the Applicant submitted that the Applicant is residing at paternal home at Kamothe, Taluka Panvel, District: Raigad. She is unable to travel alone and is required to travel with her aged father and she has no source of income and is dependent solely on her parents. Besides travel from Kamothe, Panvel to Nagpur, is around 850 kms, would take considerable time, which would cause undue hardship and expense to both her and her aged father. Consequently, she submitted that the transfer Application be allowed.

4. None appeared for the Respondent though served.

5. 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 ***Smita 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 ordering the transfer of a case from one Court to another.

6. 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 suffer undue hardship herself but also put her aged father through hardship and considerable inconvenience to travel for a long hours each time 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.

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

- i. The proceeding being M.P. No. A/489 of 2021 pending before the Family Court at Nagpur be stayed pending transfer; and be transferred to the Civil Judge Senior Division, Panvel District: Raigad.
- ii. The Registry shall forward a copy of this order to the Family Court at Nagpur, with instructions to forthwith

transmit the records of M.P No. A/489 of 2021 between the Respondent and Applicant to the Civil Judge Senior Division, Panvel District: Raigad preferably within 4 weeks from the receipt of this order.

iii. The Civil Judge Senior Division, Panvel District: Raigad shall on receipt of the records of M.P. No. A/489 of 2021, fix a date preferably within 3 weeks and issue notice to the parties for proceeding with the matter.

8. All concerned to act on the authenticated copy of this order.

(KAMAL KHATA, J.)