



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISCELLANEOUS CIVIL APPLICATION NO.124 OF 2023

Sou. Priyanka Sachin Adsul

... Applicant

Vs.

Shri Sachin Laxman Adsul

... Respondent

Ms.Fareha Rizvi, Advocate for the Applicant.

None for the Respondent.

CORAM : ABHAY AHUJA, J.
DATE : 29 SEPTEMBER, 2023.

P.C. :

1. This is an application under section 24 of the Code of Civil Procedure, 1908 (the "CPC") seeking transfer of divorce proceedings filed by husband from the Family Court, Pune to Family Court, Solapur.

2. When this matter was listed on 24th August, 2023, the following order was passed :-

"1. This Application is filed by the Applicant-wife seeking transfer of proceedings in Marriage Petition No.967 of 2022 filed by the Respondent-husband for divorce in Family Court, Pune to Family Court, Solapur.

2. Mr.Rushikesh Kale, learned Counsel for the Applicant-wife, would submit that service to Respondent-husband has been effected through his sister-in-law. Learned Counsel would submit that Applicant-wife is only 12th pass and unemployed and does not have any source of income. Learned

Counsel would submit that although there is a son from the wedlock, who is 6 years old and with the Respondent-husband, the Respondent-husband and his family do not allow the child to meet the mother. He would submit that the Applicant-wife is staying with her unmarried sister as her parents died when she was a child. Learned Counsel would submit that the sister is working as a labourer in the farm for a meagre wages of Rs.200/- per day and cannot afford Applicant's travel from Solapur to Pune every time the matter is listed in Pune Family Court, and accordingly, the application be allowed.

3. Learned Counsel would submit that the next date before the Family Court at Pune is on 28th August 2023 for appearance.

4. Having heard the learned Counsel and having perused the application, this Court is of the view that until the next date, there be a stay on the proceedings pending in the Family Court at Pune. Let the Respondent-husband appear before this Court on the next date and/or file a reply.

5. List on **14th September 2023.**”

3. This court had directed the Respondent to appear before this Court on 14th September, 2023 and/or file reply. On 14th September, 2023 when the matter was called out, none appeared for the Respondent and the following order was passed:-

“1. On 24th August, 2023, this court had directed the Respondent-husband to appear or to file a reply. However, neither the Respondent has appeared nor his representative nor a reply has been filed.

2. Mr.Vignesh Ashokar holding for Mr.Rushikesh Kale, learned counsel for the Applicant appears and submits that Mr.Kale is in personal difficulty today and unable to appear.

3. Be that as it may, list on 29th September, 2023.

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

5. It is made clear that if none appears for the Respondent on the next date, this court will hear the Applicant and pass appropriate orders.”

4. Today again when the matter is called out, none appears for the Respondent. Ms.Fareha Rizvi, learned counsel appearing for the Applicant draws the attention of this Court to paragraph No.5 of the order dated 14th September, 2023 and submits that this Court hear the Applicant and pass appropriate orders.

5. Learned counsel would submit that the marriage between the Applicant and the Respondent was solemnized on 19th February, 2017 as per Hindu Rites and Rituals. That after a few days of marriage the behaviour of the Respondent was not good and he started avoiding her. After the birth of their child on 9th November, 2017, the Applicant was under an impression that the Respondent will change. However, learned counsel submits that the Respondent did not change despite the Applicant waiting for five years. Finally in the month of February, 2022 the Applicant was compelled to leave her matrimonial home and since then she has been residing in Solapur. Learned counsel submits that the Applicant is only 12th pass and unemployed and has no source of income. That she has been staying with her unmarried sister. That the Respondent and

his family also do not allow the 6 years old son to meet the mother. She would submit that the Applicant is unemployed and her sister is working as a labourer in a farm at meagre wages of Rs.200/- per day and taking care of the Applicant. Learned counsel would submit that Respondent has instituted the subject divorce petition in the Family Court at Pune after which the Applicant has filed a petition for restitution of conjugal rights before the Family Court, Solapur. That she has also filed proceedings under the Protection of Women from Domestic Violence Act, 2005 before Judicial Magistrate First Class, Solapur. Learned counsel would submit that the Applicant is unable to undertake the travel to Pune every time the matter is listed not only because the distance between the Solapur and Pune is 265 kilometers one way but also because she is unable to bear the travelling expenses due to her poor financial condition. Learned counsel would submit that initially the Respondent on the three dates paid the travelling expenses to the Applicant, however, thereafter, no payment has been made by the Respondent. Therefore, travelling to Pune it would not only cause inconvenience but also cause undue hardship as she is not able to bear the travelling expenses being unemployed and completely depended upon her unmarried sister. Learned counsel would submit that the stage of the proceedings before the Family Court at Pune is for appearance. She also submits that the service has been effected on the Respondent through his sister in law. Learned counsel submits that despite service, Respondent is neither present nor represented and therefore, urges this Court to transfer the

divorce petition filed in the Family Court, Pune to the Family Court at Solapur.

6. It is settled law that in matters pertaining to transfer under section 24 of the CPC preferred by a wife, the convenience of the wife has to be considered. The Hon'ble Supreme court in the case of **N.C.V. Aishwarya Vs. A.S. Saravana Karthik Sha**¹ has highlighted this very aspect. 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 behavioural 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)

7. The Respondent though served is neither present nor represented. As such, the allegations and submissions made in the Miscellaneous Civil Application remain unchallenged.

1 SCC Online SC 1199 (2022)

8. Having heard learned counsel and having perused the application and having considered the inconvenience and undue hardship that would be caused to the Applicant, particularly considering the fact that the Respondent has stopped paying the expenses to the Applicant for travelling to the Pune Court, this Court is of the view that ends of justice would be met if the divorce proceedings pending before the Family Court, Pune are transferred to the Family Court, Solapur and heard alongwith the proceedings for restitution of conjugal rights filed by the Applicant in the Court at Solapur.

9. In this view of the matter, the Family Court, Pune is directed to transfer the papers and proceedings in Marriage Petition No.967 of 2022 filed by the Respondent-husband to the Family Court at Solapur and the Family Court at Solapur is directed to hear H.M.P. No.A/637 of 2022 alongwith the Marriage Petition No.967 of 2022 filed for divorce.

10. The Application is allowed in the above terms. No order as to costs.

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 two Petitions which are to be tried and decided on their own merits uninfluenced by the said observation(s).

(ABHAY AHUJA, J.)