

AGK

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

MISCELLANEOUS CIVIL APPLICATION NO.188 OF 2022

Chetana Sandeep Kadam ... Applicant

V/s.

Sandeep Babanrao Kadam ... Respondent

Digitally
signed by
ATUL
GANESH
KULKARNI
Date:
2023.02.18
10:26:56
+0530

Mr. Paras D. Yadav with Mr. Sumant Patale and Mr.
Prithviraj Chavan for the applicant.

Mr. Mahadji V. Phalke for the respondent.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 17, 2023

P.C.:

- 1.** The wife has filed present miscellaneous civil application seeking transfer of proceedings pending before the Family Court, Pune to the Family Court, Nashik.
- 2.** The marriage between applicant and respondent took place on 3rd May 2017 under the provisions of the Special Marriage Act. Due to matrimonial differences, the respondent filed Marriage Petition No.47 of 2022 before the Family Court, Pune under section 13(I)(i-a) of the Hindu Marriage Act seeking divorce against the applicant.
- 3.** The applicant has, therefore, filed present miscellaneous civil application seeking transfer of proceedings from Family Court,

Pune to the Family Court, Nashik.

4. On notice being issued by this Court, the respondent has filed reply contesting the application. According to him, the respondent is working in IT sector and, therefore, it is not possible for him to attending proceedings at Nashik. He states that he is ready to bear travelling expenses of not only the wife but also the person accompanying her. According to him, the applicant is in a position to travel to Pune. In support of his submission, he relied on an unreported judgment in Miscellaneous Civil Application No.81 of 2020 in the case of Ketaki Prathamesh Salekar v. Prathamesh Ashok Salekar decided on 16th March 2020.

5. On perusal of the application, it appears that the applicant has stated on oath that the applicant is residing in Nashik. The applicant's father has been operated six times on spinal chord which made him dependent for rest of his life and has been advised to take bed rest. Sai Hospital at Nashik advised need of another surgery in near future for his knee. In support of the said averments, documents are produced at Annexure D indicating medical history of the father. Therefore, it is inconvenient for her to travel.

6. In so far as the position of the husband based on employment in IT industry is concerned, such employment by itself is no ground to override inconvenience of wife under section 24 of the Code of Procedure, 1908. It is not the case of the husband that it is physically impossible for him to attend the Court at Nashik. Merely because the respondent is ready to bear expenses cannot be

a sole ground to reject the application.

7. The judgment of this Court in Ketaki Salekar (supra) is concerned, it is based on peculiar facts of that case. No absolute proposition of law has been laid down. The Apex Court in **N.C.V. Aishwarya v. A.S. Sarvana Karthik Sha** reported in 2022 SCC OnLine SC 1199 while considering the issue of transfer of proceedings on an application filed by the wife in paragraph 9 held 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 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 life. Given the prevailing socio-economic paradigm in the Indian society, generally, it is the convenience which must be looked at while considering transfer.

8. In the light of law laid down by the Apex Court in **N.C.V. Aishwarya** (Supra) and the fact of applicant's father being operated six times and is advised to take bed rest, the applicant has made out a case for transfer of proceedings.

9. The miscellaneous civil application is, therefore, allowed in terms of prayer clause (a). No costs.

(AMIT BORKAR, J.)