

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

MISCELLANEOUS CIVIL APPLICATION NO. 230 OF 2022

Pradnya Vijay Wankhede	.. Applicant
v/s.	
Vijay Ramesh Wankhede	.. Respondent

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Mr. Rupesh A. Jaiswal h/f. Mr. Harshal Randhir for the applicant.

Mr. Rahul D. Motkari for the respondent.

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CORAM : KAMAL KHATA, J.

DATED : 8TH AUGUST 2023.

P.C. :

1. This Miscellaneous Civil Application is filed by the Applicant wife under section 24 of the Civil Procedure Code 1908, for transfer of Regular Civil Suit No.127/2020 filed by the Respondent husband from Civil Judge, Senior Division, Nashik to Civil Judge, Senior Divison, Kalyan.

2. The Applicant's case is that the marriage took place on 5th January 1999 at Nashik. There are two children a son and a daughter out of wedlock. On 27th August, 2019 the Respondent filed Hindu Marriage Petition No.1244/2019 against the applicant for the divorce which was subsequently withdrawn, with liberty to file appropriate proceeding. In March-2020 divorce proceeding

was filed by the Respondent before Civil Judge, Senior Division at Nashik. The daughter of the applicant has filed Criminal Misc. Application bearing Criminal Misc. Application No. 49/2020 under the provisions of Protection of Women from Domestic Violence Act, 2005 before the Judicial Magistrate First Class, Kalyan against the present respondent.

3. Learned counsel for the applicant submits that the applicant-wife is a teacher in Railway School at Kalyan. The respondent who is also an employee with railways and is recently posted at Goa. It is submitted that the proceedings at Nashik are filed only with a view to harass the applicant. Learned counsel further submits that it would cause her grave inconvenience, hardship and expense to travel from Kalyan to Nashik on each of the court dates. He accordingly submits that the application be allowed.

4. On the other hand, learned counsel for the respondent submits that the respondent is a permanent resident of Nashik, he had filed the divorce proceeding at Nashik, he submits that there were two proceeding filed by him at Nashik which is being attended by the Applicant. He therefore submits that the application be rejected.

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 ***Sumita Singh v. Kumar Sanjay***¹ and ***N.C.V. Aishwarya v. A. S. Saravana Karthik Sha***² is 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.

6. In my view, considering the facts of this case, no prejudice would be caused to the respondent-husband who is posted at Goa. He would travel to Nashik instead of travelling to Kalyan. The balance of convenience is in favour of the applicant as she is a teacher and a mother, solely looking after the children. She will have undergone unnecessary hardship and expense to travel from Kalyan to Nashik. In view of the decision in the case of ***NCV Aishwarya (supra)***, I am inclined to grant this application and pass the following order;

(i) Application is allowed in terms of prayer clauses (b).

(ii) The proceedings and application made in Regular Civil Suit No. 127/2020 pending before Civil Judge, Senior

1 (2001) 10 SCC 41 : AIR 2002 SC 396

2 2022 SCC OnLine 1199

Division, Nashik be stayed pending transfer; and be transferred to Civil Judge, Senior Division, Kalyan.

(iii) The transfer may be effected within a period of four weeks and upon receipt of the papers and proceedings the Civil Judge, Senior Division, Kalyan shall give notice to the parties, preferably within three weeks, to proceed with their respective matters.

(iv) Civil Judge, Senior Division at Kalyan may grant video conferencing facility to the respondent if he applied for and if his physical presence is not absolutely necessary

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

(KAMAL KHATA, J.)