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

MISCELLANEOUS CIVIL APPLICATION NO.182 OF 2022

Gautami Rajas Paranjape Nee Gautami
Sudhir Deshmukh ... Applicant
V/s.
Rajas Paranjape ... Respondent

Mr. Rupesh Geete with Mr. Darshan Sahuji i/by Satyaki
Law Associates for the applicant.

Ms. Parul K. Vedak for the respondent.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 9, 2023

P.C.:

1. The wife has filed present application seeking transfer of the Hindu Marriage petition pending before the learned Family Court Bandra, Mumbai to the learned Family Court, Nashik.
2. On 27th January 2017 the marriage between the applicant and the opponent was performed. Due to matrimonial differences between the parties, the applicant on 6th October 2021 filed a complaint before the learned Magistrate First Class, Nashik under section 12, 18 to 21 and 22 of the Protection of Women from Domestic Violence Act, 2005. The respondent also filed a petition under section 13(1)(ia) of the Hindu Marriage Act, 1955 bearing Petition No.A-3652 of 2021 before the learned Family Court,

Mumbai. The applicant has, therefore, filed present application seeking transfer of the proceedings.

3. On notice being issued by this Court, the opponent husband has filed reply contesting allegations made in the application. The application has been opposed mainly on following grounds:

a) Video Conferencing facility is available at the learned Family Court, Mumbai, therefore, the applicant can attend such proceedings through video conferencing. She had attended such proceedings through video conferencing.

b) Due to ill-health of parents of the husband, it is not possible for him to attend the proceedings before the learned Family Court at Nashik.

c) Her conduct of filing criminal proceedings against the husband during the process of mediation disentitles her from claiming any relief. She has filed false affidavits before the Court that she cannot work anywhere but she is working with a private employer.

4. During pendency of the present proceedings, she was working in Pune in a private company.

4. The applicant is seeking transfer on following grounds:

a) She is working in Nashik.

b) Due to harassment caused by the respondent the applicant need to take treatment of psychiatric at Nashik and, therefore, it is not possible for her to visit Mumbai to attend the proceedings.

- c) She has already filed a proceeding under the provisions of the Domestic Violence Act, 2005 and the respondent can attend both proceedings at Nashik.
- d) The distance between the Nashik and Mumbai is around 200 kms. and the parents of the applicant being senior citizens they are cannot be accompanied the applicant.
- e) The respondent has his own business and, therefore, he cannot travel to Nashik where he has relatives.

5. I have heard learned advocate for both the parties. In so far as the parameters of power under section 24 of the Code of Criminal Procedure, 1908 are concerned, the Apex Court in the recent judgment in the case of **N.C.V. Aishwarya v. A.S. Sarvana Karthik Sha**, reported in 2022 SCC OnLine SC 1199. in paragraph 9 held that inconvenience of the wife needs to be considered in the light of socio-economic paradigm of Indian Society. The Apex Court in paragraph 9 has observed 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.”

6. Considering the fact that the husband needs to attend

proceeding filed by the applicant under the provisions of Domestic Violence Act, 2005 at Nashik, I find substance in the application of the applicant that he can attend both proceedings at Nashik.

7. In so far as the submission of the opponent that the facility of video conferencing is available at the learned Family Court, Mumbai operates as a bar for transfer of matter is concerned, except judgment of the Apex Court in the case of **Krishna Veni Nagam Vs. Harish Nagam** in Transfer Petition (Civil) No.1912 of 2014. no other binding ratio of the Apex Court has been pointed out. On perusal of paragraph 18 of the judgment, it appears that while considering the safeguards for parties residing outside territorial jurisdiction of the Court, the Apex Court observed that it would be in the interest of justice to incorporate safeguards that summoning of respondent does not result in denial of justice. While laying down such safeguard amongst others, availability of video conferencing facility has been held to be one of the factor for safeguarding the party residing outside territorial jurisdiction. There is no binding precedent laid down by the Apex Court either by way of ratio or obiter that power under section 24 of the Code of Civil Procedure, 1908 in an application filed by the wife seeking transfer needs to be rejected where video conferencing facility is available.

8. Considering the subsequent judgment of the Apex Court in **N.C.V. Aishwarya** (supra), para 9 which constitutes ratio, in my opinion, merely because video conferencing facility is available, that does not constitute sole factor for rejection of an application

provided by the applicant/wife makes out a case for transfer based on other grounds such as inconvenience cause.

9. In so far as the conduct of the applicant of filing criminal proceeding during the course of mediation proceeding is concerned, it is for the appropriate Court to consider bona fides of such proceedings. However, in law, the wife is not precluded from filing such proceedings if such event as alleged in the first information report had taken place. Whether filing of such proceeding is abuse of process of law needs to be adjudicated by the appropriate court in appropriate proceedings raised by the husband, however filing of such proceeding per se does not create legal impediment in the way of wife to file application under section 24 of the Code of Civil Procedure, 1908.

10. It is submitted that the wife had worked at Pune during the pendency of the present application and she attended proceedings through video conferencing. However, considering the additional affidavit on behalf of the applicant and in particular paragraph 4 which states that the applicant is suffering from the issues of anxiety and bipolar disorder which has been supported by the medical certificates dated 8th July 2022 and 27th July 2022, in my opinion, the applicant has made out a case for transfer.

11. For the aforesaid reasons, the miscellaneous civil application is allowed in terms of prayer clause (a).

(AMIT BORKAR, J.)