



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISC CIVIL APPLICATION NO. 126 OF 2023

Niyati Upendra Soni

...Applicant

V/s.

Kumar Dinkar Mane

...Respondent

Mr. Monel M. Thakkar for Applicant.

CORAM : ABHAY AHUJA, J.
DATE : 27th SEPTEMBER 2023

PC. :

1. This is an application filed by the wife seeking transfer of Divorce Petition filed by the husband from the Family Court at Pune to the Family Court at Bandra, Mumbai.

2. Mr. Thakkar, learned Counsel for the Applicant-wife would submit that although the Respondent-husband has been served, he is neither present today nor represented. Learned Counsel seeks to tender across the bar an affidavit of service indicating service to the Respondent-husband at his address in Pune. Learned Counsel would submit that although the affidavit does not contain the detailed address of the Respondent, the service was effected on c/o DVIO Digital Pvt. Ltd, Mont Vert Velocity, 3rd Floor, S. No. 140, Baner, Link Road, Pune-

411 021. Learned Counsel accordingly submits that the service to the Respondent-husband is complete. He, therefore, urges the Court to hear the application.

3. Having perused the affidavit of service and having heard the learned counsel, it appears that the service to the Respondent-husband has been effected and despite service, the Respondent is not present nor represented.

4. Learned counsel would submit that the marriage between the Applicant and Respondent was solemnized on 25th January, 2015 as per Hindu rites and rituals in the presence of family members and friends at Mumbai. He would submit that from January, 2015 till December, 2019, the Applicant and the Respondent cohabited at Thane. However, in December, 2019 Respondent-husband got a job at Pune and therefore, the Applicant and the Respondent shifted to Pune. Learned Counsel would submit that although since marriage, there were day to day differences between the couple, however, when the mental harassment and cruelty to the Applicant become unbearable, she was forced to leave from Pune around January, 2022 and came back to Mumbai to reside with her parents. Learned Counsel would submit that

there are no issues from the wedlock. He also submits that in the month of January, 2023, the Respondent-husband has filed the subject divorce petition bearing No. PA/120/2023 before family court at Pune and after notice has been issued to the petitioner, learned counsel has filed this application in the month of April, 2023 for transfer of the proceedings from Pune to Mumbai. Learned Counsel also informs this Court that the divorce proceedings before the family court at Pune are at the stage for appearance. He, however, submits that the proceedings have been stayed by an ad-interim order of this Court.

5. Learned Counsel would submit that although the Applicant is a postgraduate in event management, however, at the moment, she is working as a pre-school teacher at Charni road, Mumbai and earning about Rs. 15,000/- per month. She is in the sense dependent on her father and also staying at her father's house in Mumbai. It is submitted that the Respondent Continuously calls and threatens causing the Applicant grave mental harassment and torture and the Applicant is therefore under stress and constantly unwell. Learned Counsel would submit that therefore, the main concern is that if the Applicant visits Pune, she apprehends that the Respondent, who is working at DVIO Digital Pvt. Ltd. as a creative director since June, 2020, may cause her

further harassment and stress. He submits that both her parents are senior citizens and she does not have any friends or relatives residing in Pune nor anyone who will accompany her from Mumbai to Pune or even to the family Court at Pune. In the circumstances, it is submitted that travelling to Pune may cause inconvenience to the Applicant-wife.

6. Learned counsel would submit that although the Respondent-husband used to appear in the Pune Court before the matter was stayed, he has chosen to remain absent here nor represented.

7. The Hon'ble Supreme Court in the case of **N.C.V. Aishwarya Vs. A.S. Saravana Karthik Sha, SCC Online SC 1199 (2022)** has clearly observed that it is the convenience of the wife that is of primary importance in considering transfer application under Section 24 of the CPC. 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 behavioral 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)

8. I have heard learned Counsel, perused the application and also observe that the Respondent is neither present himself nor represented despite service. Therefore, the submissions made on behalf of the wife have gone unchallenged. In the circumstances, considering the inconvenience and hardship of the Applicant-wife, I am of the view that, ends of justice would be served if this application is allowed and the divorce petition pending before the Family Court at Pune is transferred to the Family Court at Bandra, Mumbai,

9. Accordingly, application stands allowed in terms of prayer clause 16. i, which reads thus:-

"16. i. That this Hon'ble Court may be pleased to direct that the Divorce proceedings bearing No. PA/120/2023 before the Hon'ble Family Court at Pune filed by the Respondent herein be transferred and tried before the Hon'ble Family Court at Mumbai"

10. It is made clear that any observations 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 divorce petition which is to be tried and decided on its own merits, uninfluenced by the said observations.

(ABHAY AHUJA, J.)