

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

MISCELLANEOUS CIVIL APPLICATION NO. 461 OF 2022

Mrs. Asawari Ninad Deorukhkhar ... Applicant
v/s.
Ninad Shrikant Deorukhkhar ... Respondent

...
Mr. Vishwabhushan Kamble i/b. Mr. Agasti A. Vibhute for the
Applicant.

...

CORAM : KAMAL KHATA, J.

DATED : 4TH JULY 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 Marriage Petition No. A-1001/2021 filed by the Respondent husband from Family Court, Bandra to Civil Judge, Senior Division, Alibaug, Mahad Camp, Raigad.

2. The Applicant's case is that the marriage took place on 28th November at Mumbai. They have no issues out of wedlock. On account of marital discord, the applicant is staying separately with her parents. The father of the Applicant is aged. The Applicant had made a complaint under Section 498(a) of the Indian Penal Code, 1960 to M.I.D.C. Police Station, Mahad and an F.I.R. was lodged on 26th February 2021. The applicant also filed Domestic

Violence Proceeding u/s. 12, 19, 20, 22, 23 of the Domestic Violence Act, 2005. On the other hand, the Respondent filed a petition for divorce at Family Court, Bandra under Section 13(1) (i-a) of the Hindu Marriage Act, 1955 ('HMA' for short) bearing Marriage Petition no.1001/2021 .

3. Learned counsel for the applicant submits that the applicant is unable to travel as she has no source of income and she has not been paid any maintenance so far by the respondent-husband. The distance between Bandra to Mahad is around 185 kms., which would take 7 to 8 hours to traverse. On the other hand, the respondent is well placed and would not have any inconvenience to travel. A full day's travel with an old parent or a companion and not having a place to stay in Mumbai makes it very difficult for the applicant. He accordingly submits that the application be made absolute.

4. 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 reported in (2001) 10 SCC 41 : AIR 2002 SC 396*** and ***N.C.V. Aishwarya v. A. S. Saravana Karthik Sha reported in 2022 SCC OnLine 1199*** 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. In view of the above, I am inclined to allow this application and pass the following order;

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

(ii) The proceedings and application made in M.P. No. A-1001/2021 pending before Family Court, Bandra be stayed pending transfer; and be transferred to Civil Judge, Senior Division, Alibaug, Mahad Camp, Raigad.

(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, Alibaug, Mahad Camp, Raigad, shall give notice to the parties, preferably within three weeks, to proceed with their respective matters.

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

(KAMAL KHATA, J.)