

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

MISCELLANEOUS CIVIL APPLICATION NO. 123 OF 2023

Shailesh Subhash Pol	.. Applicant
v/s.	
Bhagyashri Shailesh Pol @	
Bhagyashri Ranjitsinh Desai	.. Respondent

**WITH
MISCELLANEOUS CIVIL APPLICATION NO.134 OF 2023**

Bhagyashri Shailesh Pol @	
Bhagyashri Ranjitsinh Desai	.. Applicant
v/s.	
Shailesh Subhash Pol	.. Respondent

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Mr. Abhishek Kulkarni for the applicant in MCA/123/2023 and for the respondent in MCA/134/2023.

Mr. S.S. Patwardhan i/b. Ms. Mrinal A. Shelar for the applicant in MCA/134/2023 and for the respondent in MCA/123/2023.

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CORAM : KAMAL KHATA, J.

DATED : 9TH AUGUST 2023.

P.C. :

1. This Miscellaneous Civil Application is filed by the Applicant husband under Section 24 of the Civil Procedure Code 1908, for transfer of Marriage Petition no.A-72/2023 filed by the Respondent wife from Family Court, Kolhapur to Family Court, Pune.

2. The Applicant's case is that the marriage took place on 21st February 2019 at Kolhapur. The applicant husband filed a Divorce Petition on 23rd December 2021. The respondent wife filed the petition for Restitution of Conjugal Rights in January 2023. The learned counsel for the applicant submits that the applicant is an Indian Air Force Pilot. He submits that it would be exceedingly difficult for him to travel to Kolhapur as there is no direct flight and he would have to travel first to Pune and then to Kolhapur from Jammu to attend the matters when required by the Court. He submits that on the other hand, the wife is a practicing lawyer. There are no issues from this wedlock. He submits that he is willing to pay the travel expenses for the respondent to travel from Kolhapur to Pune on each of the Court dates. He relies upon the judgement in the case of ***Delma Lubna Coelho v/s. Edmond Clint Fernandes***¹ decided by the Apex Court on 18th April 2023 to submit that the Supreme Court had observed that in various cases, the leniency shown by the Courts towards ladies has been misused. He also refers to paragraph nos.19, 20 and 21 of the said judgement. He accordingly submits that since the

1 Transfer Petition(C)no.1475/2021

respondent also is a practising lawyer, she is capable of travelling, and therefore, this application for transfer should be allowed as the balance of convenience is clearly in his favour.

3. On the other hand, the learned counsel for the respondent submits that the respondent is not a practising lawyer as suggested by the applicant. She could not start a practice as she had been travelling with the applicant to the places wherever he was posted. She is a very junior advocate and coming from a remote area in Kolhapur and not a thriving practitioner as made out by the applicant. It is submitted that the main difficulty or inconvenience that would be caused to the respondent in travelling from Kolhapur to Pune is the travel time. The distance is around 250 Kms and from her residence at Kolhapur to the Court at Pune with the traffic conditions it would virtually take 5 to 5½ hours each way.

4. It is submitted that if she were to leave the court after court hours at around 5.30p.m. she would reach home around 10.30 or 11 p.m. and the earliest would be 9.30 to 10.00 p.m. It is submitted that the respondent is a young lady of

27 years only and she is apprehensive of her safety whilst travelling for such long hours and returning late at night to her home which is situated in a remote area in Kolhapur. It is submitted that the judgement of *Delma Lubna Coelho* (supra) is distinguishable on the facts. In that case the woman was staying abroad and the Court held that she was travelling frequently and therefore the transfer sought by her was rejected. The present case is different on facts. It is therefore submitted that the application be rejected.

5. Learned counsel for the respondent has filed an application for transfer from Pune to Kolhapur. It is submitted that the said application be allowed. He relies upon the case of *N.C.V. Aishwarya v. A. S. Saravana Karthik Sha²* to submit that after considering the merits of each case, the convenience of the wife should be preferred over the convenience of the husband. He therefore submits that the application of the applicant be rejected and her application for transfer from Pune to Kolhapur be accepted.

6. Be that as it may, I agree with the contentions of the Respondent-wife's Advocate. Considering the facts and

circumstances of this case and the time taken to travel, I feel that the inconvenience that would be caused to the young respondent, to reach her residence so late i.e. after 9.30 p.m. which is situate in a remote area, her concern for her safety is genuine. The applicant's counsel has not disputed this fact. His only concern was to travel from Jammu to Pune and then to Kolhapur. In my view, the balance of convenience is in respondent - wife's favour. The judgement in the case of *Delma Lubna Coelho* is distinguishable on facts and does not support the case of the Applicant. This is not a case where the respondent wife is seeking to harass the applicant. She has not filed any proceeding against the applicant for maintenance or otherwise. It is the applicant who seeks a divorce. Therefore, the application of the applicant is rejected and the application of the respondent to transfer from Pune to Kolhapur is allowed. Accordingly, I pass the following order;

(i) Application of the respondent wife is allowed in terms of prayer clause (a).

(ii) The Court at Kolhapur may grant Video Conferencing facility to the applicant, in the event he applies for and if his presence is not absolutely necessary.

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

(iv) Parties to act on an authenticated copy of this order.

7. The learned counsel for the applicant husband prays for stay of this order.

8. The prayer for stay of this order is rejected.

(KAMAL KHATA, J.)