



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISCELLANEOUS CIVIL APPLICATION NO.146 OF 2023

SONAM KISHOR JADHAV

)...APPLICANT

V/s.

KISHOR ASHOK JADHAV

)...RESPONDENT

Mr.Anand S. Patil, Advocate for the Applicant.

None for the Respondent.

CORAM : ABHAY AHUJA, J.

DATE : 29th SEPTEMBER 2023

PC. :

1. This is an Application seeking transfer of Hindu Marriage Petition No.468 of 2022 filed by the Respondent-husband before the Civil Judge, Senior Division, Karad, District Satara, to the Family Court, Kolhapur.

2. Mr.Patil, learned Counsel for the Applicant-wife, would submit that, although the Respondent-husband has been served, he is neither present nor represented, despite service. Learned Counsel draws the attention of this Court to order dated 7th September 2023, where this Court had recorded that, if the Respondent-husband does not appear

nor is represented on the next date, this Court will proceed to hear the Applicant and pass appropriate orders. He, therefore, requests this Court to hear him.

3. Mr.Patil would submit that the marriage between the Applicant-wife and the Respondent-husband was solemnized on 16th May 2017, at Kolhapur. Thereafter, the couple was blessed with a son. Learned Counsel would submit that, as of now, the child is 5 years old and residing with the Applicant-wife at Kolhapur. He would submit that due to cruelty and harassment at the instance of the Respondent-husband, the Applicant-wife left the matrimonial home and has been staying separately since 4th August 2022. Learned Counsel would submit that apart from taking care of her son, the Applicant-wife is preparing for competitive exam, and therefore, it will be very difficult for her to travel to Karad, every time the matter is listed there.

4. Learned Counsel submits that, on the other hand, the Respondent-husband, as mentioned in the Hindu Marriage Petition, is serving as a Senior Clerk in the Caste Verification Office at Kolhapur, and in fact, he would benefit if the Divorce Petition is transferred from Karad to Kolhapur. Learned Counsel would submit that, the Applicant-

wife has filed proceedings under the Protection of Women from Domestic Violence Act, 2005 against the Respondent-husband in Kolhapur and the Respondent-husband is attending to the same in Kolhapur, as he is also residing in Kolhapur. Learned Counsel submits that the Applicant-wife apprehends assault at the instance of the Respondent-husband, if she visits Karad, as in the past, there have been instances of beating and abusing by the Respondent-husband, when they were residing together. He would submit that the Divorce proceedings have been filed at Karad intentionally to harass the Applicant-wife, as the Applicant-wife is residing in Kolhapur and preparing for competitive exam, and that, she will not dare to go to Karad alone because of fear.

5. Learned Counsel submits that the Applicant-wife is residing with her parents and is fully dependent on them for her sustenance as well as her son's sustenance and upkeep. Learned Counsel would, therefore, urge this Court to transfer the proceedings pending in the Karad Court to the Family Court, Kolhapur, submitting that the Applicant-wife does not have much means to travel to Karad and the same would also cause undue hardship and inconvenience to her, in view of the age of the child whose care is her duty and her financial situation.

6. The Hon'ble Supreme Court in the case of **N.C.V. Aishwarya Vs. A.S. Saravana Karthik Sha**¹ has observed that in matters of this nature, it is the convenience of wife that has to be given importance. 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)

7. The Respondent-husband, though served, is neither present nor represented. Therefore, the submissions and allegations made on behalf of the Applicant-wife remain unchallenged.

8. Having heard the learned Counsel and having perused the Application, considering the inconvenience and hardship to the wife, as

¹ SCC Online SC 1199 (2022)

narrated above, this Court is of the view that ends of justice would be met if the Divorce Petition being Hindu Marriage Petition No.468 of 2022 pending before the Civil Judge, Senior Division, Karad, District Satara, is transferred to the Family Court at Kolhapur.

9. The Application is made absolute in terms of Prayer clause (a) which reads thus :

“(a) That this Hon’ble Court may be pleased to pass an order of transferring the Hindu Marriage Petition No.468 of 2022 pending on the file of learned Civil Judge, Senior Division at Karad, District Satara to the learned Family Court at Kolhapur on such terms and conditions as this Hon’ble Court deems fit and proper.”

10. The Application, accordingly, stands disposed.

11. It is made clear that any observation(s) 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 or the proceedings under the Protection of Women from Domestic Violence Act, 2005 which is to be tried and decided on its own merits uninfluenced by the said observations.

(ABHAY AHUJA, J.)