

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

MISCELLANEOUS CIVIL APPLICATION NO.156 OF 2023

MINAKSHI ALIAS RUPALI)
RAMCHANDRA PAWAR)...APPLICANT

V/s.

RAMCHANDRA UTTAM PAWAR)...RESPONDENT

Mr.Suraj Naik, Advocate for the Applicant.

None for the Respondent.

CORAM : ABHAY AHUJA, J.

DATE : 21st DECEMBER, 2023

PC. :

1. This is an Application seeking transfer of Divorce proceedings filed by the Respondent-husband before the Court of Civil Judge, Senior Division, Satara to the Court of Civil Judge, Senior Division, Sangli.

2. Mr.Naik, learned Counsel for the Applicant, points out that although this Court had granted time on 8th December 2023 to the Respondent to enter appearance today, however, none appears for the Respondent nor the Respondent is present in person. Learned Counsel urges this Court to hear the Application in view of the undue hardship and inconvenience caused to the Applicant wife.

3. Mr.Naik for the Applicant would submit that the marriage between the Applicant and the Respondent was solemnised as per Hindu Vedic Rites at Ratnagiri. That, although the Respondent was in service in the Army Cantonment, however, since he was not maintaining his wife, the Applicant had filed an Application under Section 125 of the Code of Criminal Procedure, 1973, for maintenance and alimony before the District Court at Thane and by order dated 24th April 2007, the District Court Thane had directed the Respondent to pay a total alimony of Rs.2500/- per month to the Applicant and her daughter. Learned Counsel submits that the said order was challenged by way of Revision Application before the Additional Sessions Court, Thane, which was dismissed by order dated 15th June 2013. That, since December 2022, no alimony has been paid by the Respondent.

4. That, initially, on 26th June 2006, the Respondent had filed a Petition for restitution of conjugal rights which was decreed *ex-parte* on 1st December 2006. Thereafter, in compliance of the said decree, the Applicant again started cohabiting with the Respondent but the behaviour of the Respondent towards the Applicant and her children never changed.

5. Learned Counsel submits that from the wedlock, there are two children, one daughter, who is today already over the age of 18 and a son, who is 13 years old. Learned Counsel submits that the behaviour and treatment of the Respondent towards the Applicant and the two children has been consistently abusive and irresponsible. On 18th August 2018, the Applicant had also lodged First Information Report (FIR) against the Respondent for objectionable acts against the daughter. That, in addition to the other criminal proceedings against the Respondent, there is also a case under the Protection of Children from Sexual Offences Act, 2012 (the "POCSO Act") against the Respondent in this regard, which is pending. On 18th April 2019, the Applicant has also filed Domestic Violence proceedings against the Respondent. That, on 17th December 2022, the Respondent has filed the subject Divorce proceedings before the Civil Judge, Senior Division, Karad, Satara.

6. It is submitted that the Applicant is staying at Sangli with her old parents and although she is a graduate, but has no regular source of income and has to take care of her two children. That, her father is a retired pensioner. That the Applicant is able to manage her day to day affairs with the help of her family's support but does not have any

regular source of income of her own, to afford the travel to Karad, Satara, every time the Divorce proceeding is listed there. Learned Counsel submits that the Applicant also has to look after her teen aged daughter and son. Learned Counsel submits that the distance between Sangli and Satara is more than 79 kilometers and requires 8 hours to and fro journey by train. Therefore, for the Applicant to travel to Satara from Sangli, would not only be inconvenient but also cause undue hardship. Learned Counsel submits that on the other hand, the Respondent being employed in the Army Cantonment earns a salary of Rs.50,000/- per month in addition to having 20 acres agricultural land, his own house as well as income of Rs.10,000/- to Rs.15,000/- per month from milch animals at his house. That, though the Respondent is financially capable, he has failed to take responsibility of the Applicant or her children. Neither he has provided any accommodation nor medical treatment nor education and only inflicted abuses, violence and torture upon them. That, therefore, it would not be inconvenient for the Respondent to travel to Sangli if the Divorce proceeding is transferred there, as in any event, the Domestic Violence proceedings are also pending in Sangli although the Respondent does not attend.

7. Mr.Naik draws the attention of this Court to the decision of the Hon'ble Supreme Court in the case of *N.C.V Aishwarya Vs. A.S. Saravana Karthik Sha*¹ to submit that while considering transfer of matrimonial proceedings under Section 24 of the Code of Civil Procedure, 1908, (the “CPC”) it is the convenience of the wife that has to be considered. Learned Counsel, therefore, urges before this Court that the Divorce proceedings pending before the Karad Court be transferred to the Court at Sangli.

8. The Respondent though served has chosen to remain absent nor is represented. As such, the allegations and submissions made in this Application, have remain unchallenged.

9. The Hon'ble Supreme Court in the case of *N.C.V Aishwarya Vs. A.S. Saravana Karthik Sha (supra)* and this Court in a number of cases has observed that while considering transfer of matrimonial proceedings under Section 24 of the CPC, it is the convenience of the wife that has to be looked at. And between the convenience of the wife and the convenience of the husband, preference is to be given to the convenience of the wife. Applying the settled principles to the

1 AIR 2022 SC 4318

compelling facts of the case as above, this Court is of the view that ends of justice would be served if the Divorce proceedings filed by the Respondent-husband in the Court at Karad are transferred to the Court at Sangli.

10. The Application is therefore made absolute in terms of Prayer clause (b) which reads thus :

“(b) That this Hon’ble Court be pleased to transfer the Hindu Marriage Petition No.505 of 2022 from the file of Ld. Civil Judge (S.D.), Karad, Satara to the Court of Ld. Civil Judge, Senior Division, Sangli.”

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 Marriage Petition which is to be tried and decided on its own merits uninfluenced by the said observation(s).

(ABHAY AHUJA, J.)

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