



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO. 192 OF 2023

Sarika vishal Kardak

...Applicant

V/s.

Vishal Ramesh Kardak

...Respondent

Mr. Karni Singh with Mr. Omkar Shinde i/b Shinde & Co. for
Applicant.

CORAM : ABHAY AHUJA, J.
DATE : 29th SEPTEMBER, 2023

P.C. :

1. This is an application seeking transfer of Divorce Petition
filed by the husband before the Civil Court, Senior Division,
Kalyan to Civil Court, Senior Division, Ahmednagar.

2. Mr. Singh, learned Counsel for the Applicant would submit
that the Respondent – husband though served by various modes
including Court Notice, has failed to remain present, nor is
represented today. He draws the attention of this Court to the
order dated 6th September, 2023 and requests the Court to hear
the application and pass appropriate orders.

3. Learned Counsel would submit that the marriage between the Applicant and Respondent was solemnized on 28th January, 2020 in the presence of family and friends from both sides at Rahuri in Ahmednagar. That although the Applicant and Respondent were going through severe matrimonial disputes, but still the Applicant was trying her best to continue her marriage with the husband by maintaining a cordial relationship with the Respondent and his family.

4. He would submit that on 13th December, 2021, the Applicant visited her parental house to participate in the final rituals of her father's death alongwith her girl child, aged 2 years and 4 months then and since then she has been living in her parental house at Rahuri in Ahmednagar district. Thereafter, the Applicant approached the Women's Protection Cell at District Ahmednagar on 26th October, 2022 with the hope of bringing stability in her marriage with the Respondent with the help of professional guidance as the Applicant wanted to save her marriage, however, the Respondent did not show any signs of cooperation and did not

attend any meeting organized by the Bharosa Cell.

5. That on 16th January, 2023, the Applicant filed an FIR at Rahuri Police Station, District Ahmednagar, under Sections 498-A, 323, 504 and 506 of the Indian Penal Code, 1860 against the Respondent as well as his family members. Thereafter, on 31st January, 2023, the Respondent has filed a Divorce Petition before the Court of Civil Court, Senior Division, Kalyan notice of which was received by the Applicant on 15th April, 2023. It is submitted that soon thereafter on 21st April, 2023 this application has been filed for transfer the Divorce Petition from the Court at Kalyan to the Court at Ahmednagar.

6. Learned Counsel would submit that the Applicant is at the moment not working and solely dependent on her mother's pension for her and her daughter's survival. He would submit that to travel all the way from her place of residence at Rahuri, in District Ahmendnagar to attend the matter before the Kalyan Court, which is 252 kms one way alongwith a small child would

not only be inconvenient but also cause undue hardship. Learned Counsel would submit that the stage of the proceedings before the Kalyan Court is for filing of the wife's reply. As such, if the proceedings are transferred to the Rahuri Court that would serve the ends of justice.

7. Respondent as noted above, though served is neither present nor represented before this Court. The allegations and submissions made on behalf of the Applicant therefore, remain unchallenged.

8. 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 held that in matters of this nature, the convenience of the wife has to be considered. 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)

9. Having heard learned Counsel and having perused the application and having considered the inconvenience and hardship that would be caused to the Applicant as narrated above, this Court is of the view that, ends of justice would be served, if the Marriage Petition No. 236 of 2023 filed by the Respondent- husband before Civil Court, Senior Division, Kalyan, District Thane is transferred to the Court of Civil Judge, Senior Division at Ahmednagar.

8. Accordingly, application is made absolute in terms of prayer (a), which reads thus:-

"a) To pass order for transfer of marriage Petition no. 236 of 2023 filed by the Respondent against the Applicant pending In the Civil Court Senior Division, Kalyan, To the Civil Court Senior Division, Ahmednagar, Titled "Vishal Ramesh Kardak Vs.Sarika Vishal Kardak"."

9. No order as to costs.

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.)