

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

MISCELLANEOUS CIVIL APPLICATION NO. 238 OF 2022

Kadambari Vishnu Kale	.. Applicant
v/s.	
Vishnu Gajendra Kale	.. Respondent

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Ms. Gargi Warunjikar i/b. Mr. Nitesh V. Bhutekar for the Applicant.

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**CORAM : KAMAL KHATA, J.
DATE : 21ST JUNE 2023.**

P.C. :

1. This Miscellaneous Civil Application is filed by the applicant-wife under Section 24 of the Civil Procedure Code, 1908 to transfer Hindu Marriage Petition filed by the husband from Joint Civil Judicial Magistrate Senior Division, Barshi to Family Court, Pune.

2. The Applicant and Respondent married on 11th May 2006 at Solapur. Out of wedlock a son was born who is now 15 years old studying in school at Pune. On account of the Applicant being subjected to domestic violence by the Respondent and his parents, she Applicant filed a domestic violence case bearing no. 847 of 2012 at Family Court at Pune. On account of assurances by the Respondent and his family the said case was withdrawn on 22nd

March 2013. On account of continuation of the domestic violence, the Applicant left Kurudwadi and returned to Pune to stay with her parents along with her son. On the other hand, the Respondent filed a Marriage Petition under the Hindu Marriage Act bearing No. 128 of 2020 before the Joint Civil Judge Senior Division Barshi. Dist. Solapur. The Applicant has filed Cri. Misc. Application No. 446 of 2022 before Judicial Magistrate First Class Pune u/s 12, 18 (A)-(G), 19 (F), 20(1), 22 and 23 of the Protection of Women from Domestic Violence Act, 2005.

3. The learned counsel for the Applicant submitted that it is reliably learnt that the Respondent has married again during the pendency of the Petition for divorce on account of which the Applicant has filed a Regular Criminal Complaint No. 311 of 2022 before the Judicial Magistrate First Class at Pune u/s 494 of IPC 1960 against the Respondent. The Applicant is residing at paternal home at Pune. She is a single mother taking care of her school going son at Pune and aged parents suffering with old age ailments. The Respondent has failed to support the Applicant financially or for their son and is consequently in a financial crunch. Besides, the Applicant is unable to travel to Barshi each time she is required to attend the Court at Barshi leaving her son with old and ailing parents. Besides travel from Mumbai to

Palghar would cause undue hardship and expense. On the other hand the Respondent is well placed in life. In view of the above, he submitted that the transfer Application be allowed.

4. None appeared for the Respondent though served.

5. 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 : - (i) ***Sumita Singh v. Kumar Sanjay reported in (2001) 10 SCC 41 : AIR 2002 SC 396***, (ii) ***Soma Choudhary v/s Gourab Choudhury (2004) 13 SCC 462***, (iii) ***Rajani K Pardeshi v/s Kishor B Pardeshi (2005) 12 SCC 237***, (iv) ***Anjali A Sadhwani v/s Ashok K Sadhwani AIR 2009 SC 1374*** and (v) ***N.C.V. Aishwarya v. A.S. Saravana Karthik Sha reported in 2022 SCC OnLine 1199*** is that the convenience of the woman that has to be looked into, while considering the transfer of a case from one Court to another.

6. In the light of the law laid down in the aforecited decisions, the pleadings and materials on record and the totality of the facts and circumstances of this case, particularly that it she will suffer undue hardship and expense to travel from Mumbai to Palghar from time to time, I am inclined to exercise the discretionary

powers of this Court under Section 24 of the Code of Civil Procedure and allow the application for transfer.

7. In view of the above I allow the transfer Application in terms of prayer (a):

“To Transfer the Hindu Marriage Petition No. 128 of 2020 pending in Judicial Magistrate Senior Division at Barshi to Family Court at Pune.”

8. Pending the hearing and final disposal in proceedings and application made in Hindu Marriage Petition No. 128 of 2020 before the Civil Judge Senior Division, Barshi be stayed.

9. The transfer may be effected within a period of 4 weeks and upon receipt of the papers and proceedings the Family Court at Pune shall give notice to the parties, preferably within 3 weeks, to proceed with their respective matters.

10. All concerned to act on the authenticated copy of this order.

(KAMAL KHATA, J.)