

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

MISCELLANEOUS CIVIL APPLICATION NO. 301 OF 2022

Mrs. Priyanka Mangesh Vanse
@ Pritam Sanjay Gaikwad
v/s.
Mangesh Shankar Vanse

.. Applicant

.. Respondent

...

Mr. Sameer Parkar a/w Aditya Thorat, Yash Fadtare & Aprajita
Mahto i/b. Vaibhav D. Kadam for the applicant.

...

CORAM : KAMAL KHATA, J.

DATED : 17TH JULY 2023.

P.C. :

1. Learned counsel for the applicant submits that the mediation has failed.
2. I have perused the report dated 11th July 2023 of the Mediator which confirms that mediation has failed.
3. This miscellaneous civil application under section (u/s) 24 of Code of Civil Procedure 1908 (CPC) is for transfer of Marriage Petition no.A-717/2019 from Family Court at Bandra, Mumbai to the Civil Judge, Senior Division, Niphad,

District Nashik.

4. The applicant's case is that the marriage took place at Kolgaon, Taluka Yeola, District Nashik on 27th June 2017. Out of wedlock, a son was born and is aged 4 years now. On account of physical abuse and demand of money (dowry) while she was pregnant for 7 months the applicant left the matrimonial place . She has been residing with her parents since then. On 15th March 2019 the applicant filed an application against the respondent and his family members before the Woman's Vigilance Committee, City Police Station Premises, Malegaon. On 16th May 2019, a letter was sent to the respondent to remain present before the Committee but the respondent failed to remain present.
5. On 21st May 2019, FIR no.I 86/2019 was filed against the respondent, his brother, mother, and sister for offenses punishable under Sections 498(A), 323, 504 and 506 of the India Penal Code ("IPC").
6. On 9th January 2020, the applicant filed an application under Sections 12, 17 to 20 and 22 of the Protection of Women From Domestic Violence Act, 2005 ("PWDV Act").

7. On the other hand, the respondent filed a petition for divorce being Petition no.A-717/2019 on 16th February 2019 under the Hindu Marriage Act.
8. Learned counsel for the applicant submits that the distance between Bandra and Kolgaon is around 280 kms. She would require someone to accompany her for each of the court dates. She is entirely dependent upon her father, mother and brother who are labourers for her livelihood. It is submitted that no maintenance has been granted either for her or for her child. She has no source of income. He accordingly submits that the application be made absolute.
9. Respondent has failed to appear today. No reply has been apparently filed by the respondent.
10. 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 ***Sumita Singh v. Kumar Sanjay reported in (2001) 10 SCC 41 : AIR 2002 SC 396*** and ***N.C.V. Aishwarya v. A. S. Saravana Karthik Sha reported in 2022 SCC OnLine 1199*** that in matrimonial disputes, it is the convenience of the wife which is

preferred over the convenience of the husband while considering the transfer of a case from one Court to another.

11. In my view travelling with or without a minor child itself would cause the applicant mother tremendous agony and hardship. Besides she would have to seek assistance of a companion to travel to court. The respondent has not paid any maintenance and nor offered any travel expenses. The applicant's family are labourers and would suffer loss of income each day they would have to attend court to accompany the applicant. This in itself would also cause grave financial hardship on the family who is taking care of the applicant and their minor child. In view of the above, I am inclined to allow this application and pass the following order;

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

(ii) The proceedings and application made in M.P. No.A-717/2019 pending before Family Court, Bandra, be stayed pending transfer; and be transferred to the Civil Judge, Senior Division, Niphad, District Nashik.

(iii) The Registry may forward a copy of this order to the Family Court at Bandra, Mumbai with instructions to

forthwith transmit all the records of M.P No.A-717/2019 between the Respondent and Applicant to the Civil Judge, Senior Division, Niphad, District Nashik preferably within 4 weeks from the receipt of this order.

(iv) The Civil Judge, Senior Division, Niphad, District Nashik, on receipt of the records of M.P. No.A-717/2019, may fix a date preferably within 3 weeks and issue notice to the parties for proceeding with the matter.

(v) All concerned to act on the authenticated copy of this order.

(KAMAL KHATA, J.)