

Nikita

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

MISCELLANEOUS CIVIL APPLICATION NO. 240 OF 2022

Mrs. Ritika Manish Sawlani ... Applicant

V/s.

Manish Baldev Sawlani ... Respondent

Ms. Seema Sarnaik with Mr. Anuj Tiwari for the
applicant.

Mr. R. Gite for respondent.

CORAM : AMIT BORKAR, J.

DATED : February 02, 2023

PC.:

1. The wife has filed present miscellaneous civil application challenging transfer of bearing petition No. 854 of 2022 pending before the Family Court, Bandra, to Family Court, Nashik.

2. Marriage between the applicant and respondent took place on 15th May 2015. Out of the wedlock, the applicant and respondent have a baby boy. Due to matrimonial differences between the applicant and respondent, the applicant filed proceedings under the provisions of Protection of Women from Domestic Violence Act, 2005 before the learned Judicial Magistrate First Class, Nashik. The applicant has also filed petition before the Family Court Nashik, seeking maintenance for herself and minor child under Section 18 and 20 of Hindu Adoption and Maintenance Act, which is pending before the Family Court Nashik.

The respondent has also filed proceedings for divorce under Section 13(1)(ia) of the Hindu Marriage Act, 1955. The applicant has, therefore, filed present miscellaneous civil application seeking transfer of proceedings from Mumbai to Nashik.

3. This Court issued notice to the husband in pursuance of which husband has opposed the grant of relief of transfer. The husband has contested the application mainly on the ground that the attitude of wife is unreasonable and the husband is paying amount of Rs.7,000/- towards maintenance. The husband need to take care of his old parents. She is educated lady who can travel from Nashik to Mumbai. However, the husband is having private job and would be required to seek permission of his employer every time in case the matter is transferred to Nashik.

4. The applicant in her application stated that she is residing in Nashik. This fact is undisputed. The petition under the provisions of Domestic Violence Act, seeking maintenance is also pending before the learned Judicial Magistrate First Class, Nashik. She has stated that it is inconvenient for her to travel from Nashik to Mumbai, as there is no one in her family to drop the child to school and pick him up. The parents of applicant is of advanced age and are suffering from various ailments.

5. The learned advocate for the husband relied upon the judgment of the Single Judge of this Court in the case of **Mrs. Ketaki Prathamesh Salekar Vs Prathamesh Ashok Salekar**, reported in 2021(2) ALL MR 66. On perusal of the judgment, it is apparent that this Court has not laid down any

preposition of law which constitutes ratio. The learned Single Judge of this Court in the facts of the case has rejected the application. It is well settled that it is the principle of law laid down by the Superior Court, which constitutes ratio.

6. At this stage, it would be profitable to refer to the recent judgment of the Apex Court in the **N.C. V. Aishwarya v. A.S. Sarvana Karthik Sha** reported in 2022 SCC OnLine SC 1199. The Apex Court while considering the issue of transfer of proceedings on an application filed by the wife in paragraphs 9 and 10, held 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 have to take into consideration the economic soundness of both the parties, the social strata of the spouses and their behavioural 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 life. Given the prevailing socio-economic paradigm in the Indian society, generally, it is the convenience which must be looked at while considering transfer.

10. Further, when two or more proceedings are pending in different Courts between the same parties which raise common question of fact and law, and when the decision in the cases are interdependent, it is desirable that they should be tried together by the same Judge so as to avoid multiplicity in trial of the same issues and conflict of decisions.”

7. Taking into consideration the reasons stated by the applicant to the effect that it would be inconvenient for the wife to attend the proceedings before the Family Court, Mumbai, in my opinion,

it will be convenient for wife to attend the proceedings in Nashik. Even otherwise the husband would be required to travel to Nashik to attend the proceedings under the Domestic Violence Act and the Hindu Adoption and Maintenance Act.

8. For the aforesaid reasons, the miscellaneous civil application deserves to be allowed. The miscellaneous civil application is, therefore, allowed in terms of prayer Clause (b). No costs.

(AMIT BORKAR, J.)