

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

**MISCELLANEOUS CIVIL APPLICATION NO. 252 OF 2022**

**NIKITA SACHIN TARALKAR** )...APPLICANT

**V/s.**

**SCHIN MADHAV TARALKAR** )...RESPONDENT

Mr. C. K. Bhangoji, Advocate for the Applicant-wife.  
None for the Respondent.

**CORAM : ABHAY AHUJA, J.**  
**DATE : 7<sup>th</sup> DECEMBER, 2023**

**P.C. :**

1. This is an application filed by the wife seeking transfer of restitution proceedings filed by the Respondent – husband before the Court of Civil Judge, Senior Division, Niphad, District Nashik to the Family Court at Bandra.

2. Mr. Bhangoji, learned Counsel for the Applicant would submit that none appears for the Respondent despite service. The record indicates that the Respondent has been duly served.

3. Learned Counsel submits that the marriage between the Applicant-wife and the Respondent-husband was solemnized on 15<sup>th</sup> February, 2021 at Nashik. That after the marriage, the Applicant came

to stay with the Respondent and his family. That for a month, the Applicant and his family behaved good with the Applicant, however, thereafter they started harassing her and picking up quarrels on petty issues. Being fed up with the harassment, cruelty and mental agony to her by the Respondent – husband and his family, on 21<sup>st</sup> September, 2021, the Applicant came to Mumbai.

4. It is submitted that the Respondent started sending sms and whatsapp messages by calling the Applicant as “Divorcee” and defaming her image before the relatives. The Respondent also filled up a form in the name of the Applicant in the matrimonial centre for new marriage by uploading status of the Applicant as “Divorcee”. Learned Counsel submits that on 6<sup>th</sup> December, 2021, the Applicant sent a legal notice to the Respondent to cease and desist in the acts of mental torture, arrogant and unlawful behavior and unnecessarily victimizing her by making falls and defamatory allegations against her. The Respondent replied to the same. However, he did not cease and desist in his acts. Thereafter, on 30<sup>th</sup> December, 2021, the Applicant filed FIR No. 611 of 2021 against the Respondent *inter alia* under Section 498A of the Indian Penal Code, in the Nehru Nagar Police Station at Kurla.

5. On 11<sup>th</sup> March, 2022, the Applicant filed the domestic violence proceedings before the Metropolitan Magistrate's Court at Vikhroli, Mumbai. Thereafter, on 14<sup>th</sup> March, 2022, the Respondent filed Petition for Restitution of Conjugal Right before the Court of Civil Judge, Senior Division, Niphad, Nashik. On 30<sup>th</sup> March, 2022, the Applicant-wife has filed the divorce proceedings before the Family Court at Bandra.

6. Mr. Bhangoji, learned Counsel for the Applicant would submit that the Applicant is B.Sc. (I.T.) and has recently joined a private company at CBD, Belapur, earning salary of Rs. 30,000/- per month. That her father is retired and mother is a housewife. That she has one brother, who is taking education and one sister, who is a practicing doctor at Kurla. Learned Counsel submits that the distance from Kurla to Niphad is 200 km one way and to reach Niphad, the Applicant has to leave one day before and spend at least Rs. 3000/- each time, she has to attend the Court at Niphad. Learned Counsel submits that on the other hand, the Respondent is an Engineer working in a company by name of Amdocs at Pune.

7. Learned Counsel submits that in the divorce proceedings filed by the Applicant-wife, the issues have been framed and the Applicant has also filed evidence in view of No Written Statement order against the Respondent, since he was not appearing in the Court at Bandra. Learned Counsel submits that to set aside the No Written Statement order, the Respondent has now filed an application before the Family Court at Bandra. With respect to the proceedings in Niphad Court, learned Counsel submits that the Applicant has filed Written Statement, however, the issues are yet to be framed. It is submitted that the Applicant is required to take care of her retired father, one brother, who is taking education along with her sister, who is a practicing doctor at Kurla and it would not only be inconvenient for her to travel all the way 200 km to Niphad, spending at least Rs. 3000/-for one way journey and leave one day before and therefore, this Court in view of the decision of the Hon'ble Supreme Court in the case of ***N. C. V Aishwarya Vs. A. S. Saravana Karthik Sha*<sup>1</sup>** and ***Rajani Kishor Pardeshi Vs. Kishor Babulal Pardeshi*<sup>2</sup>**, transfer the restitution proceedings filed by the Respondent -husband before the Court at Niphad to the Family Court at Bandra.

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1 SCC Online SC 1199 (2022)

2 2005 (12) SCC 237

8. Learned Counsel also submits that since the divorce proceedings are already at an advanced stage of evidence, it would be in the interest of justice that the restitution proceedings also be heard along with the divorce proceedings filed before the Family Court at Bandra.

9. I have heard Mr. Bhangoji, the learned Counsel for the Applicant and also considered the submissions made by him.

10. The Respondent though served has chosen neither to remain present nor be represented by a duly authorised Advocate. As such the allegations and submissions made in the application remain unchallenged.

11. The Hon'ble Supreme Court in the case of *N. C. V Aishwarya Vs. A. S. Saravana Karthik Sha (supra)*, has observed that 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 proceedings. That 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 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. 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.

12. In the case of *Rajani Kishor Pardeshi Vs. Kishor Babulal Pardeshi (supra)*, the Hon'ble Supreme Court while considering the convenience of the husband and the convenience of the wife, observed that it is the convenience of the wife that has to be preferred over the convenience of the husband.

13. In the case at hand, it is observed that although the Applicant and the wife appear to be employed and earning salaries, however, considering that the wife is living with her retired father and housewife mother, having a brother, who is taking education and taking care of the entire family along with her sister, who is a practicing doctor, it would certainly be inconvenient if she has to travel 200 km one way spending at least Rs. 3000/- for the journey and to leave the family one day in advance to attend the matter at Niphad. More so, that the

divorce proceedings pending before the Family Court at Bandra are at the stage of evidence, which proceeding the Applicant would anyways have to attend. The proceedings in the Court at Niphad are restitution proceedings filed by the Respondent – husband and those proceedings if heard together with the divorce proceeding at Bandra, would save unnecessarily expenditure of judicial time.

14. Considering the principles laid down by the Hon'ble Supreme Court, in the decisions discussed above, in the facts and circumstances of this case, in my view ends of justice would meet if the restitution proceedings filed by the Respondent – husband before the Court of Civil Judge, Senior Division at Niphad are transferred to the Family Court at Bandra and heard along with the divorce proceedings filed by the Applicant – wife.

15. Accordingly, Hindu marriage petition No. 88 of 2022 filed by the Respondent – husband for Restitution of Conjugal Right before the Court of Civil Judge, Senior Division, Niphad, District Nashik be transferred to the Family Court at Bandra and be heard along with the Marriage Petition (L) No. A 2155 of 2022 filed by the Applicant – wife before the Family Court at Bandra.

16. The Application stands allowed in the above terms.

17. 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).

18. This order to come into effect only upon removal of the office objections by the Applicant.

(ABHAY AHUJA, J.)

Digitally  
signed by  
NIKITA  
YOGESH  
GADGIL  
Date:  
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