



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

MISC. CIVIL APPLICATION NO. 396 OF 2022

Sonali W/o Girish Rakhe and Anr. ...Applicants
V/s.
Girish S/o Ramesh Rakhe ...Respondent

Mr. Rajesh A. Tekale, Advocate for the Applicants.

None for the Respondent.

CORAM : ABHAY AHUJA, J.
DATE : 15th SEPTEMBER 2023

P.C. :

1. This is an application filed by the wife under Section 24 of the Code of Civil Procedure, 1908 (the “CPC”) seeking to transfer the divorce petition filed by the respondent-husband from the Family Court, Nagpur to the Civil Judge, Senior Division, Panvel.

2. Mr. Tekale, learned Counsel for the Applicant would submit that although respondent has been served, he has chosen to remain absent and also not represented. Learned Counsel draws the attention of this Court to the order dated 29th August, 2023 and submits that the respondent was not represented on the

earlier occasion as well and this Court has recorded that if the respondent does not appear on the next date or is not represented, this Court would hear the applicant and pass appropriate orders. Learned Counsel would, therefore, urge this Court to hear the application.

3. Mr. Tekale, learned Counsel for the applicants would submit that the marriage between the applicant and the respondent was solemnized on 8th June, 2010 at Yavatmal. Since then the parties stayed at Yavatmal. He would submit that on 8th October, 2011 a son was born from their wedlock. That initially things were normal. However, as time progressed the respondent-husband ill-treated the applicant-wife and subjected her to regular assaults between the years 2010 to 2021. The applicant was subjected to mental and physical harassment at the hands of the respondent. During this period between 28th March, 2021 and 30th March, 2021 the petitioner was grievously assaulted by the respondent-husband with a cricket bat in front of his mother, father and son. Learned Counsel would submit that during this period, the

applicant and respondent first moved from Yavatmal to Thane and during the Covid period the respondent shifted to Nagpur and on 2nd April, 2021 the applicant's father shifted the applicant and her son to the relatives in Nagpur considering danger to the life of the applicant. On 4th April, 2021 the applicant was shifted to Kharghar, Navi Mumbai, where she filed a criminal complaint at Kharghar Police Station against the respondent for inflicting physical assault on her with a cricket bat. Thereafter on 23rd August, 2021, the applicant filed a petition under the Domestic Violence Act seeking maintenance and protection against the respondent before JMFC, Panvel. On 5th February, 2022 the respondent filed a divorce petition at the Family Court, Nagpur.

4. Mr. Tekale, would submit that on 28th April, 2022 respondent has appeared before the Panvel Court in the domestic violence proceedings. Learned Counsel would also submit that soon after the receipt of summons on 4th May, 2022 in the divorce petition filed at Nagpur, this application for transfer of divorce petition has been filed on 13th June, 2022.

5. Learned Counsel would submit that the applicant-wife is fully dependent on her parents having no financial source of her own. That her son is a minor and whose needs of going to school and his daily activities have to be taken care by the applicant. That traveling from Kharghar to Nagpur is 810 km one way and it would not be possible for her to travel to Nagpur with her minor son with neither financial resources of her own nor any one else to take care of her child. Learned Counsel would submit that therefore it would not only be inconvenient for the applicant to travel to Nagpur every time when the matter is listed but would also cause undue hardship especially considering that she has been physically assaulted several times by the respondent. Learned Counsel would submit that there is a threat to the life of the applicant and therefore this Court be pleased to transfer the divorce petition pending in Nagpur to the Court of Civil Judge, Senior Division at Panvel.

6. The respondent as noted by earlier orders of this Court as well as today is neither present nor represented despite service.

The submissions made on behalf of the applicant therefore remain unchallenged. It is a settled law that while considering matters of transfer under Section 24 of the CPC, the convenience of the wife is the norm in the prevailing socio-economic paradigm of Indian Society.

7. 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 considering the prevailing socio-economic paradigm, it is the wife's convenience that has to be seen. 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)

8. Having heard the learned Counsel and having perused the application, in the light of the aforesaid facts, this Court is inclined to allow the application. Let the divorce petition No. A-190 of 2022 pending in the Family Court No. 4 at Nagpur be transferred to the Court of Civil Judge, Senior Division at Panvel.

9. Application is disposed of accordingly.

(ABHAY AHUJA, J.)