

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

MISCELLANEOUS CIVIL APPLICATION NO. 324 OF 2022

Sapana Lakshman Dhotre	.. Applicant
v/s.	
Lakshman Shivappa Dhotre	.. Respondent

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Mr. Prashant C. Mohite i/by Ms. Vaishali Mane for the Applicant.

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CORAM : KAMAL KHATA, J.

DATED : 6TH 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 M.A. No. 73 of 2021 filed by the respondent husband under section (u/s) 25 of the Guardian and Wards Act, 1890, and H.M.A No. 309 of 2018 being application under section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights which is pending before the District Civil Judge, Ratnagiri to the Family Court, Pune.

2. The Applicant's case is that after her marriage on 30th March 2008 at Pune, the Applicant gave birth to a son on 19th April 2009 and a daughter on 26th September 2011. During her

stay at her matrimonial home, she was subjected to various acts of Domestic Violence by the Respondent and his family members. The Applicant firstly sent a notice through her Advocate on 19th November 2018 and when the acts of violence did not stop she filed an application under section (u/s) 12 of the Protection of Women Against Domestic Violence Act, 2005 against the Respondent and his family bearing M.A. No. 102 of 2019 at Pune on 4th February 2021. The said application is pending. Thereafter, the Respondent filed an Application u/s 9 on 26th March 2021 for restitution of conjugal rights before the Civil Judge, Senior Division at Ratnagiri, District - Ratnagiri which is pending. In addition, the Respondent also preferred an application u/s 25 of the Guardian and Wards Act, 1890 bearing M.A. No. 73 of 2021 before the District Civil Judge, Ratnagiri.

3. The learned counsel for the Applicant submitted that the Applicant is illiterate and unemployed and is therefore unable to travel from Pune to Ratnagiri. Besides the Respondent has failed to pay the Applicant and her two minor children ₹ 5,000/- each despite order dated 25th March 2021 of the Addl. Chief Judicial Magistrate Pune payable from January 2019 totalling to about ₹ 6,00,000/-. It is further submitted that the Applicant is unable to leave her small children studying in 9th Standard and 6th Standard

with her aged parents. Besides travel to Ratnagiri, which is around 306 kms, would take around 14 hours to and fro, which would cause undue hardship and expense. In view of the above, he submitted that the transfer Application be allowed.

4. No one 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 *Smita 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 AIR 2022 SC 4318* is that the convenience of the wife is preferred over the convenience of the husband that has to be looked into, while ordering 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 not only will the Applicant have to depend upon her aged parents to take care of her minor children in her absence but will suffer undue hardship and expense to travel from Pune to Ratnagiri 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. It is however made clear that, if a video conferencing facility is available, then on dates when the physical presence of the husband is not required, he may be permitted to attend the proceedings through video conferencing, upon an appropriate application made to the court in that behalf.

8. In view of the above I allow the transfer Application as follows:

- i. The proceeding being M.A. No. 73 of 2021 filed by the respondent husband under section (u/s) 25 of the Guardian and Wards Act, 1890 before the District Civil Judge, Ratnagiri, and H.M.A No. 309 of 2018 being application under section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights and pending before the Civil Judge Senior Division, Ratnagiri be stayed pending transfer; and be transferred to the Family Court, Pune.
- ii. The Registry shall forward a copy of this order to the District Civil Judge with instructions to forthwith transmit the records of M.A. No. 73 of 2021 filed u/s 25 of

the Guardian and Wards Act, 1890, and Civil Judge Senior Division, Ratnagiri, Judge with instructions to forthwith transmit the records of H.M.A No. 309 of 2018 filed u/s 9 of the Hindu Marriage Act, 1955 between the Respondent and Applicant to the Family Court, Pune preferably within 4 weeks from the receipt of this order.

iii. The Family Court, Pune shall on receipt of the records of M.A. No. 73 of 2021 & H.M.A. No. 309 of 2018, fix a date preferably within 3 weeks and issue notice to the parties for proceeding with the matter.

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

(KAMAL KHATA, J.)