



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

MISCELLANEOUS CIVIL APPLICATION NO. 148 OF 2023

**Harshali Shrikant Ughade
@ Harshali Dharma Bachhav**

..... Applicant

VERSUS

Shrikant Tukaram Ughade

..... Respondent

Mr.Sachin Padaye for the Applicant.

None for the Respondent.

CORAM: ABHAY AHUJA, J.

DATE : 14th SEPTEMBER, 2023

P.C:-

This is an application seeking transfer of the divorce petition filed by the husband before the Civil Judge, Senior Division, Kalyan, District Thane to the Civil Judge, Senior Division, Nashik.

2. Mr.Sachin Padaye, learned counsel for the applicant draws attention of this Court to the order dated 31st August, 2023 and submit that although the respondent has been duly served, none appears for the respondent.

3. Learned counsel would submit that inspite of opportunity given

to the respondent, none appears on his behalf even today. He would submit that the marriage between the applicant and the respondent was solemnized on 3rd January, 2021 as per Hindu Rites and rituals at Nashik. However, after few days of co-habiting with the respondent at Kalyan, Thane, the respondent and his family members started harassing and torturing the applicant physically and mentally.

4. Learned counsel would submit that thereafter when the applicant was pregnant, the respondent and his family members did not take care and continued to mentally and physically torture the applicant due to which the applicant had to leave her matrimonial home on 4th July, 2021 and come to her father's house at Nashik and since that date, she has been residing at Nashik. Learned counsel would submit that on 26th September, 2021 a daughter was born. That during the COVID period, her father has expired.

5. On 26th March, 2022, the respondent has sent a notice to the applicant to which the applicant replied seeking maintenance of Rs.50,000/- per month. However, since no maintenance was forthcoming, the applicant has filed domestic violence proceedings on

17th December, 2022 before the J.M.F.C., Nashik for maintenance as the applicant is unemployed and dependent on her parents.

6. On 3rd April, 2023, the applicant received a summons from the Civil Judge, Senior Division, Kalyan along with the divorce petition filed by the respondent before the Kalyan Court.

7. Mr.Padaye would submit that the applicant is dependent on her younger brother who is the only person employed and she has to look after her two years old daughter as well as widowed mother who has various ailments and cannot accompany her to Kalyan Court for the court proceedings.

8. Learned counsel would submit that prior to the stay granted by this Court, the proceedings before the Kalyan Court was for appearance of the applicant. He would submit that the distance between Kalyan and Nashik is 272 kms to and fro. That the applicant does not have any relatives at Kalyan with whom she could stay when she has to attend the proceedings before the Kalyan Court. Learned counsel would submit that in the facts and circumstances of this case, it is not only

inconvenient for the applicant to travel to Kalyan but also causing undue hardship considering the age of the applicant's child and the health of her mother as well as the family's financial condition. He urges this Court that the divorce petition filed in Kalyan Court be transferred to Nashik Court.

9. I have heard learned counsel for the Applicant. The respondent though served has neither remained present nor is represented.

10. It is settled law that while considering the transfer petitions under section 24 of the Code of Civil Procedure, 1908, the convenience and hardship caused to the wife has to be considered.

11. My above view draws support from the decision of the Hon'ble Supreme Court in the case of ***N.C.V. Aishwarya Vs. A.S. Saravana Karthik Sha, SCC Online SC 1199 (2022)*** where the Hon'ble Supreme Court has clearly observed that in proceedings of this nature it is the convenience of the wife that has to be considered. Paragraph No.9 of the said decision is relevant and is 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 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 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)

12. Having heard learned counsel and having considered the facts and circumstances of the case, in the light of the law settled, this Court is inclined to allow the application. The application is allowed in terms of prayer clause (b) which is quoted as under :-

(b) Pass an appropriate order directing the transfer of Marriage Petition No. 191 of 2023 pending before the Ld. 6th Jt. Civil Judge, Senior Division, Kalyan, District – Thane to the Ld. Civil Judge, Senior Division, Nashik, District – Nashik.

13. It is made clear that any observations 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 observations.

[ABHAY AHUJA, J.]