

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

MISCELLANEOUS CIVIL APPLICATION NO.326 OF 2022

BHAGYASHRI @ PURUVI RANJIT PATIL)...APPLICANT

V/s.

RANJIT DILIP PATIL)...RESPONDENT

Mr. Anilkumar K. Patil a/w Mr. Manish K., Ms. Zeel Jain, Advocate for the Applicant.

None for the Respondent.

CORAM : ABHAY AHUJA, J.

DATE : 15th DECEMBER, 2023

P.C. :

1. Today when the matter is called out, Mr. Patil, learned Counsel for the Applicant, would submit that although as recorded by earlier orders, notice has been served on the Respondent, however, none appears. Learned Counsel, therefore, urges this Court to hear this Application submitting that sufficient opportunity has been granted to the Respondent to appear.

2. Mr.Patil would submit that by this Application, the Applicant is seeking transfer of Divorce proceedings filed by the Respondent-husband in the Family Court at Nashik to the Family Court at Dhule. Learned Counsel would submit that marriage between the Applicant and the Respondent was solemnized on 2nd June 2006 as per Hindu rituals at Dhule. That, out of the said wedlock, in the year 2007 and in the year 2012 respectively, two daughters were born who are in the care and custody of the Applicant. Learned Counsel submits that in the year 2017, the Applicant was compelled to leave the matrimonial home of the Respondent after which on 5th September 2020, the Respondent-husband sent a legal notice to the Applicant for divorce which was replied to and an offer to stay together was also made, however, the same did not materialize, and therefore, in October 2020, the Applicant filed complaint before Mahila Takrar Nivaran Kendra, Dhule. In November 2020, the Applicant filed an Application under the Protection of Women from Domestic Violence Act, 2005, before the Judicial Magistrate, First Class, Dhule. Thereafter, on 3rd November 2020, the Applicant received summons of the Respondent's Divorce Petition filed before the Family Court, Nashik. That, the Applicant has been forcibly removed from the house of the Respondent along with her daughters and physical torture has been meted out to her, and

therefore, the Applicant, left with no choice, had to go and stay with her parents at Dhule.

3. Learned Counsel would submit that the distance between Nashik and Dhule is around 150 kilometers. That it takes approximately 3 to 4 hours to reach Nashik. It is not possible for the Applicant to return home on the same day after attending Court proceedings at Nashik.

4. Learned Counsel submits that the Applicant has a diploma in Fine Arts and conducts tuitions by which she earns her daily bread and butter to take care of herself and her daughters. Learned Counsel submits that the Applicant's parents are old and unable to support her in any manner. That, the two children are school going and their entire up-keep is the responsibility of the Applicant. That, in the circumstances of the case, where she is living at the mercy of her parents, who are old and aged and retired and with meagre source of income and with nobody to accompany her to Nashik, the travel from Nashik to Dhule every time the matter is listed in the Court would not only be inconvenient but also cause undue hardship. Learned Counsel submits that this Court consider the inconvenience and hardship of the Applicant and allow the Application.

5. Learned Counsel would submit that the stage at which this Court had granted stay in respect of the proceedings in Nashik was a very nascent stage, as this Application was filed soon after the summons was received. Learned Counsel would submit that on the other hand, the Respondent-husband is a mechanical engineer working at Nashik and drawing a handsome salary and it would not be inconvenient for him to come and attend the proceedings at Dhule, as he is already attending the Domestic Violence proceedings there.

6. Mr.Patil draws the attention of this Court to the decisions of the Hon'ble Supreme Court in the case of **N.C.V. Aishwarya Vs. A.S. Saravana Karthik Sha**¹ and also in the case of ***Rajani Kishor Pardeshi vs. Kishor Babulal Pardeshi***² and submits that in cases of this nature, the convenience of wife has to be considered and also that the convenience of the wife has to be preferred over the convenience of the husband.

7. I have heard Mr.Patil, learned Counsel for the Applicant and considered the submissions made by him as also the reply filed by the Respondent.

1 AIR 2022 SC 4318

2 2005 (12) SCC 237

8. It is observed that despite Vakalatnama of two Advocates having filed on behalf of the Respondent, none has been appearing in the matter, although reply has been filed in the matter. A perusal of the reply indicates that the reply proceeds merely on the basis of denials and counter allegations of desertion. There is also an offer to pay for the travel expenses, however, none appears for the Respondent despite service of notice and several opportunities. This Court has perused the reply and is of the view that there is no substantial defence made against the allegations and submissions made in the Application. As pointed out by the learned Counsel for the Applicant, it is the convenience of the wife that has to be considered and preferred over the convenience of the husband.

9. 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.

10. 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.

11. Considering the above facts, this Court is of the view that ends of justice would be met if the Divorce Petition filed by the Respondent-husband before the Family Court at Nashik is transferred to Family Court, Dhule.

12. The Application is made absolute in terms of Prayer clause (b) which reads thus :

“(b) This Hon’ble Court be pleased to transfer proceedings viz. Divorce Petition A-378/2020 filed by the Respondent husband before Family Court, Nashik under Section 13(1)(i-a) and (i-b) for Dissolution of Marriage to Family Court, Dhule.”

13. 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 Divorce proceedings which is to be tried and decided on its own merits uninfluenced by the said observation(s).

(ABHAY AHUJA, J.)

ARTI
VILAS
KHATATE

Digitally signed
by ARTI VILAS
KHATATE
Date: 2023.12.18
10:52:45 +0530