



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

MISCELLANEOUS CIVIL APPLICATION NO. 332 OF 2022

Mrs. Pooja Arjun Vyawahare .. Applicant
v/s.
Mr. Arjun Babanrao Vyawahare .. Respondent

**WITH
MISCELLANEOUS CIVIL APPLICATION (ST) NO. 27985 OF 2022**

Mr. Arjun Babanrao Vyawahare .. Applicant
v/s.
Mrs. Pooja Arjun Vyawahare .. Respondent

**WITH
CRIMINAL APPLICATION NO. 341 OF 2022**
Mr. Arjun Babanrao Vyawahare .. Applicant
v/s.
Mrs. Pooja Arjun Vyawahare .. Respondent

...
Mr. Amey D. Deshpande for the Applicant in MCA/332/2022 and
for Respondent in MCA(ST)/27985/2022.

Mr. Girish I. Dipwani for the respondent in MCA/332/2022 and for
the Applicant in MCA(ST)/27985/2022.

...

CORAM : KAMAL KHATA, J.

DATED : 10TH AUGUST 2023.

P.C. :

1. This Miscellaneous Civil Application No.332 of 2022 is filed
by the Applicant-wife under section 24 of the Civil Procedure Code
1908, for transfer of petition A No.205/2022 filed by the
Respondent husband from Family court at Amravati to Family
Court, Pune.

2. The Applicant and the respondent got married on 16th February 2020 at Amravati. Out of wedlock a daughter was born on 25th December 2020. On account of mental and physical torture that the applicant was put through, on 29th September 2021 she left the matrimonial house to reside with her parents at Amravati. After residing there for about a week, on 8th October 2021, she shifted to Pune in search of a job which she eventually got on 1st April 2022. The applicant then applied for judicial separation by filing Hindu Marriage Petition No. A 1248/2022 at Family Court, Pune on 22nd June, 2022 under Section 10 of the Hindu Marriage Act. She also filed a case of domestic violence at JMFC, Pune. On the other hand, on 6th July, 2022 the respondent-husband applied for divorce by filing a divorce petition bearing Petition A. 205/2022 at Family Court, Amravati.

3. Learned counsel for the applicant urged that the applicant has already been through a difficult period and thus it would cause the applicant tremendous inconvenience, hardship and expense to travel from Pune to Amravati for attending the court matters. He submitted that since the distance between Pune and Amrawati is 500 kms which would take around 10 to 12 hours single way it would necessitate an overnight stay. This would entail seeking leave from the job for each court date and on account of such

frequency the applicant apprehends losing the job. On the other hand, the respondent-husband is an event manager and he is well settled, there would be no prejudice caused to him if matter be transferred. Thus, the balance of convenience is in favour of the applicant.

4. The learned counsel referred to the judgment in the case of ***N.C.V. Aishwarya v. A. S. Saravana Karthik Sha***¹ wherein it was held that in matrimonial disputes, it is the convenience of the wife which is preferred over the convenience of the husband while considering the transfer of a case from one Court to another. He accordingly submits that the application be allowed.

5. On the other hand learned counsel for the respondent submits that respondent-husband has a 2 ½ year old child to look after. His parents are aged i.e. 65 and 60 years old. It would be challenging to travel with the child for such long hours and equally a task for the parents to take care of the child at night in the absence of the father. It is submitted that the respondent's inconvenience out weighs the inconvenience of the wife. He relies on the judgement in the case of ***Delma Lubna Coelho v. Edmond Clint Fernandes***² and submits that each case should be decided on

1 2022 SCC OnLine 1199

2 AIR 2023 SC 2106 : AIR OnLine 2023 SC 294

its own merits. Mere inconvenience to travel cannot be a ground for transfer of proceedings from Amravati to Pune and thus the application deserves to be rejected.

6. In the present case both the applicant and respondent would undergo hardships and inconvenience for attending the court matter. As per the recent decision of the Apex court in the case of ***NCV Aishwarya (supra)***, I would have been inclined to transfer the proceedings to Pune giving preference to the wife's inconvenience. However, on weighing the scales, I have to give preference to the husband who is playing the role of the mother of a 2 ½ year old child. I foresee more hardship, inconvenience and difficulties for the respondent's aged parents to keep the 2 ½ year old child in the absence of the respondent who is both father and mother to the child apart from the anxiety caused to the child on not seeing the respondent for each night that the respondent would have to travel for court case.

7. After considering all facts and circumstances, in my view, the balance of convenience weighs in favour of the respondent-husband. I therefore, reject the application for transfer.

8. However, keeping in mind the hardships, inconvenience and

the apprehension of the applicant-wife, the Family Court at Amravati is directed to grant video conferencing facility to the applicant-wife if she applies for it and excuse her presence unless the Court deems it absolutely necessary.

9. Learned counsel for the respondent shall pay the transportation charges to the respondent-wife in the event, she is required to attend the court at Amravati.

10. Parties and all concerned to act on the authenticated copy of this order.

(KAMAL KHATA, J.)