

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

MISCELLANEOUS CIVIL APPLICATION NO. 331 OF 2022

Mrs. Rohini @ Bageshri Girish Sarode	.. Applicant
v/s.	
Girish N. Sarode	.. Respondent

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Ms.Saba Shaikh a/w Mr. Anuj Tiwari for the applicant.

Mr. R. M. Haridas i/b. S. N. Biradar for the respondent.

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CORAM : KAMAL KHATA, J.

DATED : 25TH JULY 2023.

P.C. :

1. This Miscellaneous Civil Application is filed by the Applicant wife under section 24 of the Civil Procedure Code 1908, for transfer of Marriage Petition No.A-440/2020 filed by the respondent husband from Family Court, Nagpur to Family Court, Nashik.

2. The applicant's case is that the marriage took place at Thane on 24th February 1995. Out of said wedlock, two daughters were born in the year 1996 and 2002. In the year 2003, the respondent was posted to Delhi but he was not willing to take the applicant with him to Delhi. In or around 2003-04, the

respondent was posted to Nashik. However, the applicant was forced to live in Thane along with her daughters. It is submitted that the respondent was not interested in allowing the applicant to live with him. Since the year 2010, the respondent has not allowed the applicant to cohabit with him. Consequently, the applicant was constrained to live with the parents at Thane along with her younger daughter and on account of her education. It is submitted that the applicant has no one to support her and she has to look after her aged parents as well. The respondent has filed a Marriage Petition for divorce before the Family Court at Nagpur on 24th July 2020 bearing No.A-440/2022. The applicant is residing in a rented premises at Nashik. In the above background, the applicant seeks transfer from Family Court, Nagpur to Family Court at Nashik.

3. Learned counsel for the respondent submits that on account of his job, he has been transferred from Nashik to Nagpur to Nandurbar. He submitted that the applicant-wife is residing at parental home at Thane and not at Nashik as alleged. It is submitted that the applicant has filed the petition in the petition bearing no.A-440/2020 filed before the Family Court at Nagpur wherein residential address is that of Thane. It is

submitted that no cause of action has arisen in Nashik and the application is thoroughly misconceived.

4. It is submitted that the respondent is taking the maintenance of educational expenses of elder daughter who is pursuing the Post Graduation Course at London and further, the respondent is also paying the interim maintenance of Rs.30,000/- to the applicant and the younger daughter. It is submitted that the applicant is also getting rent of Rs.30,000/- p.m. from the flat at Nagpur which stands in the name of the applicant and the respondent jointly. It is submitted that this application is clearly filed to purposely harass the respondent. It is submitted that the petition at Nagpur is listed for final arguments, and therefore, transferring the same would cause delay. It is further submitted that the applicant is educated and able bodied therefore, travelling is not going to cause her inconvenience or prejudice in attending the courts at Nagpur. He accordingly, submits that the application for transfer be rejected.

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 *Sumita Singh v. Kumar Sanjay*¹ and *N.C.V. Aishwarya v. A. S. Saravana Karthik Sha*² 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.

6. In the present case, the conduct of the respondent is questionable. He has apparently deserted the wife who is now staying with their younger daughter. The wife is already left to fend for herself after fifteen years of marriage i.e. since 2010 and now its almost 13 years later she has been dragged to court for divorce proceedings. She doesn't deserve this at this stage of her life as the travelling for the proceedings would cause her tremendous agony, hardship and inconvenience. In view of the above, I am inclined to allow this application and pass the following order;

(i) Application is allowed in terms of prayer clause (B).

(ii) The proceedings and application made in M.P. No.A-440/2020 pending before Family Court, Nagpur be stayed pending transfer; and be transferred to the Family Court,

1 (2001) 10 SCC 41 : AIR 2002 SC 396

2 2022 SCC OnLine 1199

Nashik.

(iii) The Registry shall forward a copy of this order to the Family Court Nagpur, with instructions to forthwith transmit all the records of M.P No.A-440/2020 between the Respondent and Applicant to the Family Court, Nashik preferably within 4 weeks from the receipt of this order.

(iv) The Family Court, Nashik shall on receipt of the records of M.P. No.A-440/2020, fix a date preferably within 3 weeks and issue notice to the parties for proceeding with the matter.

(v) All concerned to act on the authenticated copy of this order.

(KAMAL KHATA, J.)