

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

MISCELLANEOUS CIVIL APPLICATION NO.50 OF 2023

Pooja Pravin Khanderao	... Applicant
Vs.	
Pravin Prahlad Khanderao	... Respondent

Ms. Brenda D'Souza, Legal Aid Advocate for the Applicant.
None for the Respondent.

CORAM : ABHAY AHUJA, J.
DATE : 07 DECEMBER, 2023.

P.C. :

1. Today when the matter is called out, Ms. Brenda D'Souza, learned counsel for the Applicant who has been appointed through legal aid submits that the rejoinder has been filed in the matter. Learned counsel submits that she had sought to serve the rejoinder upon the Respondent-husband. However, the packet has been returned with the remark "Refused to accept". Learned counsel urges this Court to hear the application and pass orders.

2. A perusal of the record indicates that the Respondent had filed a reply earlier and pursuant to the said reply dated 5th July, 2023, the Applicant has filed a rejoinder which was sought to be served upon the Respondent which the Respondent has refused to accept.

3. It is submitted that the marriage between the Applicant and the Respondent was solemnized on 18th February, 2018 as per Buddhist rites. The learned counsel for the Applicant would submit that the only bone of contention in the marriage is that the Applicant wants to live at Mumbai whereas the Respondent refused to do so and filed Divorce Petition before the Family Court, Khamgaon , District Buldhana .

4. It is submitted that on 16th February, 2019 the Applicant phoned her mother and called her to Shirajgaon Deshmukh at the residence of Respondent and both of them together left for Mumbai. After that the Respondent has filed the divorce proceedings before the Family Court, Khamgaon in the year 2019.

5. Ms. D'Souza would submit that the Applicant is presently employed in a hospital as an Aaya and staying with her mother and also undergoing some training to become a nurse. It is submitted that the Applicant comes from very poor family background and she is staying with her widowed mother and also takes care of her mother who is working as domestic maid in people's homes. That for the Applicant to travel every now and then when the matter is listed before the Family Court at Khamgaon would not only be inconvenient but also cause undue hardship considering the financial condition. Apart from the fact that it would be an expensive affair, the distance between Mumbai and Khamgaon is 408 kilometers and to travel to Khamgaon, being a lady would be

too risky and particularly to undertake the early morning or late night journeys. Ms. D'Souza would submit that on the other hand the Respondent-husband is a carpenter and earns approximately Rs.1000/- per day and not a daily wage earner as claimed in the reply. That the Respondent has mentioned that his parents are very old is also an incorrect statement as the Respondent has a Bungalow and lives with his mother and father who are aged between 47 to 55. That the father of the Respondent is still employed with the Buldhana Municipality and therefore, it cannot be said that the Respondent is a man of no means. It is submitted that the very fact that the Applicant has approached the Legal Aid itself shows that the Applicant is not in a good financial condition. Therefore, although the reply filed by the Respondent is also through Legal Aid Buldhana, the same has been filed by giving false information about himself and his family. Learned counsel submits that in view of the principles laid down by the Hon'ble Supreme Court in the cases of **N.C.V. Aishwarya Vs. A.S. Saravana Karthik Sha**¹ as well as **Rajani Kishor Pardeshi Vs. Kishor Babulal Pardeshi**², this Court transfer the divorce proceedings filed by the husband before the Khamgaon Court to the Family Court at Bandra.

6. I have heard the learned counsel and also perused the application as well as the reply and the rejoinder. The Respondent, though served, has chosen to remain absent and not represented although a reply has been filed on his

1 SCC Online SC 1199 (2022)

2 2005(12) SCC 237

behalf. In the rejoinder the contentions in the reply have been denied.

7. Be that as it may, the law of transfer of such matters is clear. It is the convenience of the wife that has to be seen and between the convenience of the husband and the convenience of the wife, it is the convenience of the wife that has to be preferred.

8. It is settled law that in an application pertaining to transfer under section 24 of the Code of Civil Procedure preferred by a wife, the convenience of the wife has to be considered. The Hon'ble Supreme court in the case of **N.C.V. Aishwarya Vs. A.S. Saravana Karthik Sha (supra)** has highlighted this very aspect. Paragraph No.9 of the said decision is usefully 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)

9. In the case of **Rajani Kishor Pardeshi Vs. Kishor Babulal Pardeshi (supra)** the Hon'ble Apex Court while considering the argument of the husband opposing the transfer on the ground that it was equally inconvenient for him to go to Satana and that he would be willing to pay the expenses for the wife's travel to Mumbai, held that in these type of matters, the convenience of the wife would be preferred over the convenience of the husband and accordingly transferred the proceedings pending before Mumbai Court to the Family Court at Satana, Madhya Pradesh. Paragraphs 3 and 4 of the said decision are usefully quoted as under :

“3. The husband opposes the transfer on the ground that it is equally inconvenient for him to go to Satana and that he is willing to pay the expenses for her travel to Mumbai.

4. In this type of matter, the convenience of the wife is to be preferred over the convenience of the husband. Hindu Marriage Petition No.6 of 2004, Kishor Babulal Pardeshi v. Rajani Kishor Pardeshi pending before the Court of Civil Judge, Senior Division at Panvel, Mumbai, Maharashtra is transferred to the Family Court of proper jurisdiction at Satana, Madhya Pradesh.”

(Emphasis Supplied)”

10. In this view of the matter, keeping in mind the principles laid down by the Hon'ble Supreme Court in cases of **N.C.V. Aishwarya Vs. A.S. Saravana Karthik Sha (supra)** as well as **Rajani Kishor Pardeshi Vs. Kishor Babulal Pardeshi (supra)** and considering the facts above, I am inclined to allow the application.

11. The Application stands allowed in terms of prayer clause (a) which reads thus:-

“That by a suitable order or direction, this Hon’ble court be pleased to transfer Petition No.A-60 of 2019 pending on the file of Hon’ble C.J.S.D. Khamgaon Tal-Khamgaon Dist. Buldhana to the Family Court Bandra, Mumbai. This Hon’ble court may deem fit and proper in the interest of justice to transfer the case to “Family Court Bandra, Mumbai before the appropriate Judge/Bench”

12. 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 Divorce Petition which is to be tried and decided on its own merits uninfluenced by the said observations.

(ABHAY AHUJA, J.)

Digitally
signed by
PRIYA
RAJESH
SOPARKAR
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