

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

MISCELLANEOUS CIVIL APPLICATION NO. 141 OF 2021

Mrs. Devyani Dasganu Hake @ Panchpula Devkate v/s. Dasganu Govind Hake	.. Applicant .. Respondent
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Mr. Machhindra A. Patil for the Applicant.

Mr. Mateen Shaikh for the Respondent.

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CORAM : KAMAL KHATA, J.

DATED : 20TH 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 H.M.P. no.23/2020 filed by the Respondent husband from Civil Judge, Senior Division, Mukhed, Dist: Nanded to Civil Judge, Senior Division Thane.

2. The Applicant's case is that the marriage took place on 11th May, 2015 at Mukhed. Out of the said wedlock, a girl was born on 18th September 2016. On account of marital discord, the applicant resides with her father at Airoli, Navi Mumbai. On 23rd September 2019, the applicant filed domestic violence proceedings bearing PWDA No. 49 of 2019 at Mukhed. On 26th November

2019 the respondent issued a notice for Restitution of Conjugal Rights. On 22nd January 2020, HMP No.23/2020 for divorce was filed at Mukhed by the Respondent. On 20th September 2021 present application was filed.

3. Learned counsel for the applicant submits that the distance between Airoli and Mukhed is around 600 kms. and a single journey would take 10 to 12 hours. Learned counsel submits that the applicant has no independent source of income. Applicant is a B.com graduate with the Diploma of Education degree, on the other hand, respondent is a Computer Engineer and working with Guru Govindsingh Engineering College, Vishnupuri, Nanded. In view of the above, learned counsel for the applicant submits that the application be made absolute.

4. Learned counsel for the respondent, on the other hand, submitted that the applicant had decided to desert him and stays at her father's residence. It is submitted that through an advocate's notice dated 26th November 2019, the respondent called upon the applicant to cohabit with him. However, by reply dated 5th February 2020, the applicant had refused to come and cohabit with the respondent and in fact demanded a sum of Rs.25,000/- from the respondent. It is submitted that the application under Section 498-A was filed with a deliberate intent to harass the respondent. It is submitted that the applicant

accused 9 persons in her complaint including his married sisters who were even not staying in and around Mumbai. In fact one of the married sisters was staying in Telangana. It is submitted that the learned counsel for the applicant has suppressed material facts in the application inasmuch as order dated 21st December 2021, whereby this court has directed the parties to cohabit and which they had done. It is submitted that from October 2021 to March 2022 in fact the applicant and the respondent cohabited at Nanded and that the applicant's mother, father and brother were residing with the respondent during that period. It is further submitted that inspite of specific orders not to visit the respondent's parents at their home town, the applicant had visited and created an unpleasant scene. It is further submitted that on 4th March 2023 also, a complaint was registered by the applicant against the respondent.

5. It is submitted that allegations that the respondent had married again are totally baseless and are unfounded. It is lastly submitted that since his aged parents are dragged into complaint at Ahmedpur, it would be inconvenient for the witnesses i.e. his aged parents and/or his married sisters who also have minor children and who need to attend the court as witnesses, to be travelling from Mukhed to Navi Mumbai.

6. It is further submitted that the respondent is willing to pay

the travelling expenses to the applicant being a sum of Rs.6,000/- for each trip that she attends court for the matter.

7. The Court in the case of ***Anindita Das v/s. Srijit Das***¹ held that the Court is required to consider each petition on its own merits. If the travelling expenses are paid and the child can be looked after by someone then the Court may not consider the transferring the case.

8. In another case viz. ***Amruta Akshay Nikte v/s. Akshay Anilkumar Nikte***² the Court held that a journey of around a 150kms in a day cannot be considered extreme inconvenience.

9. The Apex Court in the case of ***N.C.V. Aishwarya v/s. A. S. Saravana Karthik Sha***³ held that the Courts have to consider 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 life.

10. In this case considering the behavioural pattern of the Applicant and the inconvenience that would be caused to the accused family members of the respondent who are apparently dragged into this divorce matter, I find that the balance of

1 (2006) 9 SCC197

2 2021 SCC OnLine e Bom 13811

3 2022 SCC OnLine SC 1199

convenience is in favour of the respondent. Therefore, I am inclined to reject the application for transfer made by the applicant.

11. However, it is clarified that the respondent shall deposit a sum of Rs.6,000/- in the applicant's account by way of electronic mode on each visit of the applicant to the court.

12. The Court at Mukhed may grant video conferencing facility to the applicant if applied for and if their physical presence is not absolutely necessary.

13. Application is disposed.

14. Parties to act on an authenticated copy of this order.

(KAMAL KHATA, J.)