

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

MISCELLANEOUS CIVIL APPLICATION NO. 364 OF 2022

Sou. Smita Rushikesh Patil @

Smita Bhaskarrao Pawar

.. Applicant

v/s.

Rushikesh Bhimrao Patil

.. Respondent

...

Mr. Pavan Patil a/w. Mr. Nitin Jagtap for the Applicant.

...

CORAM : KAMAL KHATA, J.

DATED : 26TH JUNE 2023.

P.C. :

1. This Miscellaneous Civil Application is filed by the applicant-wife under Section 24 of the Civil Procedure Code, 1908 to transfer Hindu Marriage Petition by the husband from Family Court, Dhule to Family Court, Pune.

2. The Applicant and Respondent married on 24th May, 2005 at Bhusawal. On 18th August 2006 and on 2nd November 2009 two sons were born out of wedlock. The Applicant shifted to Pune along with her two minor sons in the year 2017 for the purpose of their education. On 14th June, 2019 respondent filed a Petition A No.95 of 2019 (Divorce Petition) under Section 13(1)(ia) of the Hindu Marriage Act, 1955 before the Family Court at Dhule. The applicant-wife is working as Branch Manager in Parvati Swayam

Vikas Co-operative Society, Limited, Pune. It is stated that *ex parte* divorce adjudication was done. The applicant has since sought to set aside the *ex parte* order of divorce.

3. The learned counsel for the Applicant submitted that the Applicant is residing with her two minor sons at Pune. The traveling time from Pune to Dhule takes around 9 hours to and fro. No maintenance has been paid to the applicant-wife and minor children. It is submitted that the Applicant has to take care of two minor sons who cannot be left with someone, each time for a Court date. The Respondent though well placed has failed to support the Applicant financially. She would therefore have to suffer undue hardship and expense to attend the Court each time. In view of the above, he submitted that the transfer Application be allowed.

4. None appeared for the Respondent though served.

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 :- (i) ***Sumita Singh v. Kumar Sanjay reported in (2001) 10 SCC 41 : AIR 2002 SC 396***, (ii) ***Soma Choudhary v/s Gourab Choudhury (2004) 13 SCC 462***, (iii) ***Rajani K Pardeshi v/s Kishor B Pardeshi (2005) 12 SCC 237***, (iv) ***Anjali A Sadhwani v/s Ashok K Sadhwani AIR 2009 SC 1374*** and (v) ***N.C.V. Aishwarya v. A.S. Saravana Karthik Sha reported in 2022 SCC OnLine 1199*** is that the convenience of the woman

that has to be looked into, while considering the transfer of a case from one Court to another.

6. In the light of the law laid down in the aforecited decisions, the pleadings and materials on record and the totality of the facts and circumstances of this case, particularly that the applicant will suffer undue hardship and expense to travel from Pune to Dhule from time to time, I am inclined to exercise the discretionary powers of this Court under Section 24 of the Code of Civil Procedure and allow the application for transfer.

7. In view of the above, I allow the transfer Application as under:

“Transfer the Hindu Marriage Petition No. 95 of 2019 pending before Family Court, Dhule to Family Court, Pune and stay the proceedings pending transfer.”

8. The transfer may be effected within a period of 4 weeks and upon receipt of the papers and proceedings the Family Court, Pune shall give notice to the parties, preferably within 3 weeks, to proceed with their respective matters.

9. All concerned to act on the authenticated copy of this order.

(KAMAL KHATA, J.)