

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

MISC. CIVIL APPLICATION NO. 362 OF 2022

Mrs. Mangal Navnath Wadekar. .. Applicant

Vs.

Navnath Shankar Wadekar. .. Respondent.

Mr. Nitesh S. Nevshe, for applicant.

Ms. Aarti D. Bhonsle, Mr. Siddharth Mehta, Ms. Arti D. Gaikwad for respondent.

CORAM : KAMAL KHATA, J.

DATE : 15 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 Marriage Petition (M.P.) No. 363/2022 which is pending before the Civil Judge Senior Division at Vadgaon-Maval, Pune, Miscellaneous Application No. 138 of 2013 pending before Judicial Magistrate First Class at Vadgaon, Maval and Criminal Miscellaneous Application No. 90 of 2015 pending before Judicial Magistrate of First Class at Pimpri, Pune to Family Court, Bandra, Mumbai.
2. The Applicant's case is that her marriage was solemnized on 11th April, 2007 at Om Namah Shivay Mangal Karyalay Khane Phata, Maval. Out of wedlock, the Applicant gave birth

to twins on 8th May, 2009 viz. a boy and girl. During her stay at the matrimonial home she was subjected to various acts of Domestic Violence by the Respondent. The Applicant discovered that the Applicant has married again on 11th March 2014 and has a girl out of the said wedlock. The applicant was forced out of the matrimonial home and is compelled to stay at her paternal home at Mumbai. The Applicant filed a Cri. Misc. Application No. 138 of 2013 before the Judicial Magistrate First Class at Vadgaon Maval as well as domestic violence case being C.C No. 90 of 2015 before the JMFC Pimpri Pune. On the other hand, the Respondent filed a Marriage Petition No. 363/2022 for divorce at Civil Judge Senior Division at Vadgaon-Maval, Pune under section 13(1) (i-b) of the Hindu Marriage Act, 1955.

3. The learned Counsel for the applicant submitted that the Applicant is residing at paternal home at Vikroli, Mumbai. She has no source of income and is totally dependent on her parents. She is unable to travel to Pune as she has to nurture two children. Besides, she has no one to accompany her to Pune each time she is required to remain present in Court. The distance from Mumbai to Pune is around 154 kms. would take considerable time and cause undue hardship and

expense. On the other hand, the Respondent has salary income from contractor as well as income from agriculture conducted on ancestral land. Consequently, he submitted that the transfer Application be allowed.

4. Heard the learned Counsel for the Respondent at length who has no effective defense.
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 vs. Kumar Sanjay** reported in (2001) 10 SCC 41: AIR 2002 SC 396 and **N.C.V. Aishwarya vs. A.S. Saravana Karthik Sha** reported in 2022 SCC OnLine 1199 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 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 not only will the Applicant have suffer undue hardship herself but also have considerable inconvenience to travel with some companion besides traveling with her kids would cause tremendous inconvenience and hardship. Consequently, 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 in terms of prayer clauses (a) and (b) as follow:

(i) The proceedings and application made in MP no. 363/2022 pending before Civil Judge Senior Division at Vadgaon-Maval, Pune be stayed pending transfer; and be transferred to the Family Court, at Bandra, Mumbai.

(ii) The proceedings and applications made in Cri. Misc. Application No. 138 of 2013 pending Judicial Magistrate First Class at Vadgaon-Maval and Cri. Misc. Application no. 90 of 2015 pending before Judicial Magistrate of First Class at Pimpri, Pune be stayed pending transfer; and be transferred to the Family Court, at Bandra, Mumbai.

(ii) The Registry shall forward a copy of this order to the Civil Judge Senior Division at Vadgaon-Maval, Pune, Judicial Magistrate First Class at Vadgaon-Maval and Judicial Magistrate of First Class at Pimpri, Pune with instructions to forthwith transmit all the records of M.P. No. 363/2022, Cri. Misc. Application No. 138 of 2013 and Cri. Misc. Application no. 90 of 2015 respectively between the Respondent and

Applicant to the Family Court at Bandra, Mumbai preferably within 4 weeks from the receipt of this order.

(iii) The Family Court at Bandra, Mumbai shall on receipt of the records of M.P. No. 363/2022, Cri. Misc. Application No. 138 of 2013 and Cri. Misc. Application no. 90 of 2015, fix a date preferably within 3 weeks and issue notice to the parties for proceeding with the matter.

8. All Concerned to act on the authenticated copy of this order.

[**KAMAL KHATA, J.**]