

SA Pathan

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

MISCELLANEOUS CIVIL APPLICATION NO.372 OF 2022

Devashree Tuhin Ghosh

C/o. Madhav Dhar

... Applicant

V/s.

Tuhin Ghosh

... Respondent

Mr. Mahesh Joshi a/w. Mr. Prashant Mule for the
Applicant.

Mr. Ravi S. Jadhav for the Respondent.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 16, 2023

P.C.:

1. The wife has filed the present Application seeking transfer of proceedings from the Family Court, Pune to the Court of Civil Judge, Senior Division, Kalyan.
2. The marriage between the Applicant and the Respondent was solemnized on 1st July, 2013, due to matrimonial differences they were started residing separately. Out of wed-lock they have a girl child aged about 8 years.
3. The Respondent has filed Petition No.D/62 of 2021 for custody of minor girl child. Additionally, the Respondent has filed marriage Petition No.PA 2289 of 2021 for dissolution of marriage

under Section 13(1)(i-a) of the Hindu Marriage Act, before the Family Court, Pune.

4. The Applicant has, therefore, filed the present Application seeking transfer of the proceedings pending before the Family Court, Pune to Court of Civil Judge Senior Division, Kalyan. The Respondent was contested the Application by filing reply to transfer the proceedings. He has opposed on the ground that the custody of the girl child, is with the Respondent. She is suffering from various ailments. The Respondent is working from home to take care of the girl child. The Respondent is ready to bear expenses of travelling of Applicant. He needs to take care of his ill parents. The distance between Badlapur to Pune is around 130 k.m., which would be convenient for the wife. There is no risk of life to the Applicant.

5. He placed reliance upon the judgment of the Apex Court **Meenakshi vs Mukesh Kumar**, reported in (2004) 13 SCC 497 and **Kanagalakshmi vs Venkatesan**, reported in (2004) 13 SCC 405. Relying on the judgments, it is submitted that when the husband is ready to bear expenses of wife, generally the Applications are rejected by the Court.

6. Having considered the submissions made on behalf of both sides, it needs to be noted that there is no dispute that the Applicant is residing at Badlapur. The Applicant has stated that it is inconvenient for her to travel to Pune.

7. Insofar as, the ground of ill health of the girl child, it is undisputed that the 24 hours supervision is not required to take care of child. The health condition as reflected in the reply, is not so grim, which requires constant supervision of Respondent.

8. Apart from inconvenience caused to the wife to transfer, considering distance around 130 k.m. from Pune to Kalyan, it would not be inconvenient for husband to travel to Kalyan. Insofar as judgment in the case of **Meenakshi** (supra) and **Kanagalakshmi** (supra), no absolute proposition of law nor any legal proposition has been led down by the Apex Court.

9. The Apex Court had decided in peculiar facts of the case conclusively in the recent judgment. The Apex Court in the case of **N.C.V. Aishwarya v. A.S. Sarvana Karthik Sha** reported in 2022 SCC OnLine SC 1199. The Apex Court while considering the issue of transfer of proceedings on an application filed by the wife in paragraph 9 held 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 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 life. Given the prevailing socio-economic paradigm in the Indian society, generally, it is the convenience which must be looked at while considering transfer.

10. Relying on the recent judgment of the Apex Court, the Applicant has made out the case of transfer of proceedings. The Application is, therefore, allowed in terms of prayer clause (a)

(AMIT BORKAR, J.)