

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

MISCELLANEOUS CIVIL APPLICATION NO. 366 OF 2019

Mrs. Majeeda Mauzam Kazi .. Applicant
v/s.
Mauzam Mustaq Kazi .. Respondent

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Mr. Y. E. Mooman i/by Ms. Manisha B. Gawde for the Applicant.

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CORAM : KAMAL KHATA, J.

DATED : 5TH JUNE 2023.

P.C. :

1. By this present application, the applicant who is the wife of respondent seeks a direction to transfer the Regular Civil Suit No. 84/2019 from the 2nd Joint Civil Judge Junior Division, Ratnagiri to the Family Court, Bandra, Mumbai and stay of the proceeding of the Regular Civil Suit No. 84/2019 pending the final disposal of the Civil Application.

The brief facts in the present application are as under:

2. The applicant/wife had filed the proceeding under Section 12 of the Domestic Violence Act, 2004 (for short "DV Act") against respondent No.1 as well as father in law, mother in law and sister in law bearing No. 7/DV/2011 before the Metropolitan Magistrate, Mazgaon, Mumbai (MMC Court) and sought reliefs under Sections

18 to 22 of the DV Act.

3. On 12th June 2015, MMC Court passed an order in favour of the applicant. An appeal was preferred by respondent no.1 before the Hon'ble Sessions Court bearing Appeal No. 779 of 2015. On 8th March 2016, appeal was partly allowed by reducing the maintenance from Rs.15,000/- to Rs. 10,000/- granted in favour of the applicant apart from setting aside the grant of compensation of Rs. 2,50,000/- in favour of the applicant/wife. The Criminal Revision Application was preferred by the applicant/wife against the order dated 8th March 2016 which is pending disposal. Since the order of the Appellate Court in favour of the applicant/wife i.e. to pay the maintenance amount as directed was not complied with, the Metropolitan Magistrate Court (MMC) was pleased to issue a non-bailable warrant against the respondent.

4. The non-bailable warrant issued against respondents could not be executed as the respondent was neither available at Andheri nor at Ratnagiri which were the residential addresses known to the applicant/wife.

5. In the meantime, the applicant/wife was served with the writ of summons along with the copy of the plaint bearing RCS

No.84 of 2019 filed before the 2nd Joint Civil Judge Junior Division, Ratnagiri. It is stated that though the marriage between the applicant and respondent took place in Mumbai and were residing in Mumbai, after their marriage, the respondent filed the suit before the 2nd Joint Civil Judge Junior Division, Ratnagiri with the intention of harassing the applicant/wife.

6. Mr. Mooman, learned counsel for the applicant submitted that the applicant is a homemaker and a pardanashin lady. He submitted that she is recently living at the mercy of her retired father as well as sister and has no source of income. He submitted that she is striving to take care of their son who was born on 28th September 2008 out of wedlock with the respondent no.1. He submitted that inspite of the orders of the appellate court reducing the monthly maintenance from Rs. 15,000/- to Rs.10,000/-, no amount whatsoever has been paid by the respondent till date. He submitted that the applicant/wife apprehends danger to her life from the respondent and his family. Since she has no source of income, she will undergo tremendous hardships and expenses to appear before the 2nd Joint Civil Judge, Junior Division, Ratnagiri. He submitted that, in any event, the Family Court, Bandra would have jurisdiction to entertain the suit, as the cause of action had arisen in Mumbai. He consequently prayed that the application for

transfer be allowed.

7. I have heard the learned counsel for the applicant and also perused the papers, proceedings and orders passed by this Hon'ble Court.

8. By an order dated 12th March 2020, notice was issued to the respondents and made returnable on 9th May 2020 thereafter by an order dated 6th January 2022 once again this Court directed notice to be served though pending proceedings being RCS No.84/2010 pending before the 2nd Joint Civil Judge, Junior Division, Ratnagiri which was made returnable on 28th February 2022. Pursuant to the court order dated 6th January 2022, a notice was issued to the sole respondent from the Civil Judge, Junior Division, Ratnagiri which was returned unserved with the bailiff remark "Not residing at given address". In view thereof, this court by an order dated 21st March 2022 directed issue of fresh notice to the respondent through the counsel who was representing the respondent in the pending RCS No.84 of 2019 and made it returnable on 19th April, 2019. On 19th April, 2022 this Court was informed that the non-applicant/respondent was detained in Arthur Road Prison pursuant to the order passed by the Magistrate under the DV Act proceedings. In view thereof, the

respondent was served through the Superintendent, Arthur Road Jail.

9. Be that as it may, none appears today on behalf of the respondent. The Hon'ble Apex Court in the case of N.C.V. Aishwarya vs. A. S. Saravana Karthik Sha, reported in AIR 2022 SC 4318 has in paragraph 9 observed as under:

“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 taken into consideration the economic soundness of both the parties, the social strata of the spouses and their behavioral pattern, their standard of life prior to the marriage and subsequent thereto and the circumstances of both the parties eking out their livelihood and under whose protective umbrella they are seeking their maintenance to life. 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.”

10. In my considered view, the facts of the present case squarely fall within a purview of judgment of the Hon'ble Apex Court. Consequently, the MCA No. 366 of 2019 is made absolute as under:

- a. The 2nd Joint Civil Judge Junior Division, Ratnagiri to transfer the Regular Civil Suit No.84 of 2019 to the Family

Court, Bandra at the earliest and in any event within a period of four months from the date of this order.

b. The Family Court, Bandra is directed to dispose of the suit as expeditiously as possible and preferably within a period of six months from the date of the transfer of papers and proceedings.

c. The cost of this application which is determined at Rs.15,000/- shall be payable by respondent no.1 to the applicant/wife upon the final disposal of the Regular Civil Suit No.84 of 2019.

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

(KAMAL KHATA, J.)