

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

MISCELLANEOUS CIVIL APPLICATION NO. 184 OF 2021

Mr. Manoj Gajanan Pawar	.. Applicant
v/s.	
Mrs. Aarti Manoj Pawar	.. Respondent

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Mr. Santosh G. Pawar for the applicant.
Mr. Santosh S. Amrutsagar for the respondent.

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CORAM : KAMAL KHATA, J.
DATED : 2nd AUGUST, 2023.

P.C. :

1. This Miscellaneous Civil Application is filed by the Applicant husband under section 24 of the Civil Procedure Code 1908, for transfer of Domestic Violence Case No.5/2021 filed by the Respondent wife from Judicial Magistrate First Class, Kalyan to Family Court Nashik / Judicial Magistrate First Class, Nashik.
2. The Applicant's case is that the marriage took place on 23rd May, 2002 at Kalyan. They have no children born out of wedlock. On account of marital discord, the applicant is staying separately with her parents. On 29th January, 2020, the Respondent-wife filed N.C. complaint bearing

no.145/2020 at Indira Nagar Police Station against the applicant-husband under Sections 323, 504, 506 of Indian Penal Code.

3. The applicant has filed a petition for restitution of conjugal rights at Family Court, Nashik in December, 2020. On 25th August 2021 respondent wife filed DV case no.5/2021. On 26th October, 2021 the respondent filed a divorce petition under Section 13(1)(ia) of the Hindu Marriage Act, 1955 before Civil Judge Senior Division, Kalyan. The present Misc. Civil Application is filed on 23rd September, 2023.
4. It is the case of the applicant that the entire family of the respondent – wife is at Nashik. It is the applicant's case that the respondent is currently working at Nashik. In view thereof, it would be appropriate that the Domestic Violence case be transferred from Kalyan to Nashik.
5. On the other hand, the learned Counsel for the respondent submits that since 5th February, 2019, the respondent – wife is residing with her maternal uncle at Kalyan fearing threat to her life. Learned counsel for the respondent submits that the applicant is unable to travel as she has no source of

income and she has not been paid any alimony or maintenance till date. The distance between Kalyan to Nashik is around 150 kms. which would take around 3 to 4 hours to and fro which also would cause her inconvenience especially when she is dependent on her parents for livelihood.

6. In my view, the applicant has not made out any case for transfer of the application from Kalyan to Nashik. It is seen from the application filed by the respondent wife that she is residing at Kalyan.
7. It is submitted that in view of the threat of physical abuse, she had to shift to Kalyan. Fearing physical abuse she does not want to travel to Nashik and therefore, it is submitted that the application for transfer for Domestic Violence proceeding from Kalyan to Nashik be rejected.
8. 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 v. Kumar Sanjay***¹ and ***N.C.V. Aishwarya v. A. S.***

1 (2001) 10 SCC 41 : AIR 2002 SC 396

Saravana Karthik Sha² 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.

9. In this case it is clear that the respondent has shifted from Nashik to Kalyan although her maternal home is at Nashik. The apprehension may be valid and there is no reason for me to doubt the same. Besides the inconvenience and expense to travel the preference of the wife is required to be considered in transfer applications. The circumstances therefore necessitate the husband's application for transfer be rejected.

10. In view of the above, I pass the following order;

- (i) Misc. Civil Application is rejected.
- (ii) Judicial Magistrate First Class, Kalyan may however consider granting video conferencing facility to the applicant if applied for and if his physical presence is not absolutely necessary.
- (ii) All concerned to act on the authenticated copy of this order.

MANE
SONALI
DILIP

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MANE SONALI DILIP
Date: 2023.08.04
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(KAMAL KHATA, J)