

This order is corrected vide speaking to minutes of order dated 20-12-2023

13. MCA 383-23.doc

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

MISC. CIVIL APPLICATION NO. 383 OF 2023

**Gauri Sunil Patil
V/s.
Sunil Manaji Patil**

**...Applicant
...Respondent**

Mr. Tejas Hartalkar for Applicant.
None for Respondent.

**CORAM : ABHAY AHUJA, J.
DATE : 12th DECEMBER, 2023**

P.C. :

1. This is an application filed by the Applicant-wife seeking transfer of divorce proceedings filed by the Respondent-husband before the Court of Civil Judge, Senior Division at Kalyan, District, Thane to the Court of Civil Judge, Senior Division at Islampur, District Sangli.

2. Mr. Hartalkar, learned Counsel for the Applicant points out to the earlier orders of this Court and submits that although service to the Respondent is complete, none appears for the Respondent even today nor any reply has been filed. Learned Counsel draws the attention of this Court to the order dated 1st December, 2023, to submit that this Court has clearly recorded in the said order that if none appears for the Respondent on the next date, this Court will proceed to hear the

matter. Learned Counsel, therefore, urges this Court to hear the matter today.

3. It is observed that none appears for the Respondent, despite being served and despite opportunity being granted. Accordingly, this Court proceeds to hear the matter.

4. Mr. Hartalkar, learned Counsel for the Applicant would submit that the marriage between the Applicant and the Respondent was solemnized on 17th June, 2019 in District Sangli. That there are no issue to the parties out of the wedlock. Learned Counsel would submit that earlier the Respondent – husband had issued a notice to the Applicant seeking divorce by mutual consent, which was replied to by the Applicant, who wanted to co-habit with the Respondent. However, despite, the same the Respondent had gone ahead and filed the divorce proceedings against the Applicant on 1st March, 2023, in the Court of Civil Judge, Senior Division, Kalyan. It is submitted that the Applicant was served with the notice on 24th April, 2023 and she has filed written statement. That pursuant to the stay granted by this Court in this Application, the proceedings before the Court in Kalyant have been stayed.

5. Mr. Hartalkar, would submit that the Respondent is a practicing Advocate and he has gone ahead and filed multiple proceedings against the Applicant only to harass her. Learned Counsel submits that the Applicant has filed Criminal Misc. Application under the Domestic Violence Act against the Respondent and his family members before the JMFC, Shirala, District. Sangli. Learned Counsel submits that the Applicant is from a village and residing at village Arala and is unemployed, living with her parents. Learned Counsel would submit that her father is a agriculturist and has practically no source of income to support the travel of the Applicant to Kalyan. Learned Counsel would submit that the distance between Arala village and Kalyan is about 350 km one way and it takes more than 10-12 hours one way. As she is not accustomed to travel to Mumbai alone, she has to be accompanied with atleast one elderly person to Mumbai and for that purpose the Applicant is required to spend at least Rs.3000/- per day to attend the Court at Kalyan, which is not possible to spend in view of her being unemployed and her father being a simple agriculturist. Learned Counsel submits that the Applicant is undergone to some medical treatment, due to which she cannot take long journey from her native village and also seeks to draw this Court's attention to the

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medical papers at Exhibit C of the Application, to substantiate the treatment she has been taking but she has now discontinued the same although she still can't undertake long journeys.

6. Learned Counsel would submit that therefore it is not only inconvenient for the Applicant to travel to Kalyan but also would cause undue hardship, if the divorce proceeding is not transferred from Kalyan to Islampur. Learned Counsel submits that on the other hand the Respondent is a practicing Advocate at Kalyan and he would not suffer any hardship if the divorce proceedings are transferred to Islampur.

7. Mr. Hartalkar, learned Counsel for the Applicant draws the attention of this Court to the judgment dated 15th September, 2023 in the case of *Mrs. Priyanka Rahul Patil Vs. Rahul Ravindra Patil*¹ in support of his contention with respect to the hardship that would be caused to the Applicant- wife, if she is called upon to attend to the Court at Kalyan.

8. I have heard Mr. Hartalkar, learned Counsel for the Applicant and also considered his submissions.

¹ MCA 310 of 2022

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9. The Hon'ble Supreme Court in the case of ***N.C.V. Aishwarya Vs. A.S. Saravana Karthik Sha***² has clearly held that in matters where matrimonial proceedings come up for consideration under Section 24 of the Code of Civil Procedure, 1908, (CPC) ends of justice demand that generally it the convenience of the wife which must be looked at. Paragraph No. 9 of the said decision is usefully quoted 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 are called upon to consider the plea of transfer, the Courts have to take 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 in eking out their livelihood and under whose protective umbrella they are seeking their sustenance to like. 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.”

(Emphasis Supplied)

11. Also, in the case of ***Rajani Kishor Pardeshi V/s. Kishor Babulal Pardeshi***³, the Hon'ble Apex Court has observed that the convenience of the wife has to be preferred over the convenience of the husband. Paragraphs 3 and 4 of the said decision are usefully quoted as under :

² SCC Online SC 1199 (2022)

³ 2005 (12) SCC 237

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“3. The husband opposes the transfer on the ground that it is equally inconvenient for him to go to Satana and that he is willing to pay the expenses for her travel to Mumbai.

4. In this type of matter, the convenience of the wife is to be preferred over the convenience of the husband. Hindu Marriage Petition No.6 of 2004, Kishor Babulal Pardeshi v. Rajani Kishor Pardeshi pending before the Court of Civil Judge, Senior Division at Panvel, Mumbai, Maharashtra is transferred to the Family Court of proper jurisdiction at Satana, Madhya Pradesh.”

(Emphasis supplied)

10. This Court has also, as pointed out by the learned Counsel for the Applicant in number of matters including ***Mrs. Priyanka Rahul Patil Vs. Rahul Ravindra Patil (supra)***, observed that while considering applications under Section 24 of the CPC with respect to matrimonial proceedings not only the convenience of the wife has to be considered but the convenience of the wife has to be preferred over the convenience of the husband.

11. The Respondent despite service has chosen not to be represented nor any reply has been filed on his behalf. As such the allegations and submissions made in the application remain unchallenged.

12. Therefore, applying the settled principles of law to the facts of this case, I am of the considered opinion that ends of justice would be

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met if the application is allowed as prayed for. The application is accordingly made absolute in terms of prayer clause (a), which reads thus:-

“(a) That this Hon’ble High Court be pleased to transfer the Marriage Petition No. 397 of 2023, filed in the Court of Jt. Civil Judge (S.D.), Kalyan, Dist. Thane, for Divorce, under Section 13 (1) (i-a) of the Hindu Marriage Act, 1955, pending in the Court of Jt. Civil Judge (S.D.), Kalyan, Dist. Thane, to the Court of Civil Judge (S.D.), at Islampur, Dist. Sangli, to try, entertain and decide the same”

13. Application accordingly stands disposed.

14. It is made clear that any observation(s) on the merits of the dispute between the parties is only to consider this application which shall not influence the trial or disposal of the Marriage Petition which is to be tried and decided on its one merits uninfluenced by the said observation(s).

(ABHAY AHUJA, J.)