

AGK

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

MISCELLANEOUS CIVIL APPLICATION NO.376 OF 2022

Tushar Ajit Bansode

... Applicant

V/s.

Shanam Tushar Bansode

... Respondent

Ms. Meghna Gowalani for the applicant.

Mr. Anand Mishra for the respondent.

Digitally
signed by
ATUL
GANESH
KULKARNI
Date:
2023.02.18
10:26:56
+0530

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 17, 2023

PC.:

- 1.** The husband has filed present miscellaneous civil application seeking transfer of proceedings pending before Civil Judge Senior Division, Gadchiroli to the Family Court, Bandra, Mumbai.
- 2.** The marriage between applicant and respondent took place on 3rd November 2019. Due to matrimonial differences between the parties, the respondent/wife filed proceedings under the provisions of the Protection of Women from Domestic Violence Act, 2005 on 29th November 2021. The applicant received notice of said proceedings.
- 3.** The applicant has filed present application seeking transfer of proceedings under Hindu Marriage Act pending before Civil Judge Senior Division, Gadchiroli to the Family Court, Bandra,

Mumbai.

4. The respondent/wife has filed reply contesting the contentions raised in the applicant. According to wife, though she is residing in Mumbai she is required to travel out of India and, therefore, the present application deserves to be rejected.

5. According to her, witnesses in support of the proceedings pending before the Court at Gadchiroli are local residents and, hence, the application cannot be allowed. She submitted that the Court at Gadchiroli is having facility of video conferencing which the husband can avail. In support of his submission, learned advocate for the respondent/wife relied on the judgment in **Krishna Veni Nagam v. Harish Nagam** in Transfer Petition (Civil) No.1912 of 2014 decided on 9th March 2017 **Subramaniam Swamy v. Ramakrishna Hegde** in Transfer Petition (Civil) No. 338 of 1989 decided on 18th October 1989.

6. I have heard learned advocates for the parties. Ordinarily convenience of wife is major ground for transfer proceedings under section 24 of the Code of Civil Procedure, 1908. The respondent is wife. However, according to her she is resident at Gadchiroli and, therefore, opposing transfer of proceedings. The applicant/husband has sought transfer mainly on the ground that both the parties are residing in Mumbai and, therefore, it will be convenient for both parties to attend proceedings in Mumbai. The factor of residence of wife has been seriously disputed by the respondent/wife. However, the documents produced on record by the husband, in my opinion, conclusively shows that the wife is

residing in Mumbai. The following circumstance/documents show that wife is residing in Mumbai. In the reply filed by wife she stated as under:

“9. ... I say that yes it is true that I am working for a company which is based at Mumbai and since I am into marketing job, I have to travel to all the cities in India. ...”

17. I say that much persuasion is given to the fact that I am working at Mumbai and therefore I am also residing at Mumbai can also be negated. I say that it is very pertinent to note that I am having a job which is a private job and the fact that job is there today but tomorrow I can also be jobless and/or I may require to change my job which may be in some other city/state.

18. ... I say that I am all by myself in the city of Mumbai for my work purpose and I have no contacts and/or any well-wishers/relatives in this city who can help me when I am in trouble. ...”

7. The document of TransUnion (CIBIL) Consumer CIR shows residential address of the respondent/wife as C-602, DSK Madhukosh, Safed Pul, Andheri, East, Sakinaka, Mumbai 400 072. The date of report is dated 11th January 2022.

8. The report of the protection officer shows that when he visited the office of respondent/wife at Andheri on 21st July 2022, the company officials disclosed that the respondent is working in their company and is earning Rs.1,56,450/-. The documents and circumstances mentioned above shows that the wife is residing in Mumbai.

9. The copies of roznama annexed at Exhibit “D” by husband discloses that the wife is consistently remaining absent before Judicial Magistrate First Class, Gadchiroli. The roznama of nearly

ten (10) days has been annexed, out of which the wife has attended only one (1) date. The admission by wife in her reply that though she is working in the company in Mumbai, she has to travel all over India. But failure to attend proceedings before the Court at Gadchiroli shows that said proceedings have been initiated at Gadchiroli only to harass the applicant. This Court is not commenting upon merits of allegations in the complaint but venue of trial is to harass the husband.

10. Considering the fact that the wife is residing in Mumbai, it would be convenient for her to transfer the matter pending before the Court at Gadchiroli to Mumbai.

11. The judgment relied upon by the respondent in **Krishna Veni Nigam** (supra) does not lay down proposition of law that in every case where video conferencing facility is available, the Court while exercising power under section 24 has to reject such application. The observations made in the judgment are for the purpose of incorporating safeguards for the litigants who reside outside territorial limits of the Court. Therefore, the said judgment has no application in the facts of the present case.

12. In so far as judgment in the case of **Subramaniam Swamy** (Supra) is concerned, as is evident from observations made in paragraphs 8 and 10 that mere convenience of one of the party is no ground to transfer the matter; however, the paramount consideration for transfer is requirement of justice.

13. As observed above, since both parties are residing in Mumbai, it would be in the interest of both parties to transfer

proceedings at Gadchiroli to Mumbai.

14. The miscellaneous civil application is, therefore, allowed in terms of prayer clause (b). No costs.

(AMIT BORKAR, J.)