

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

MISCELLANEOUS CIVIL APPLICATION NO. 459 OF 2022

Ashwini Malve	.. Applicant
v/s.	
Rajkiran Malve	.. Respondent

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Mr. Kanishk Waghware i/b. Ms. Bhavana A. Kadam for the Applicant.

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CORAM : KAMAL KHATA, J.

DATED : 22nd JUNE 2023.

P.C. :

1. This Miscellaneous Civil Application is filed by the applicant-wife under Section 24 of the Civil Procedure Code, 1908 to transfer Divorce Petition No. 32 of 2022 which is pending before the Shrirampur Court, Ahmednagar to the Igatpuri Court.

2. The Applicant's case is that her marriage was solemnized on 15/05/2010 at Nashik. Out of a wedlock, parties have three children aged about 10, 8 and 4 years respectively. Due to matrimonial differences, parties started residing separately. The applicant, therefore, filed Divorce Petition under Section 13 (1) (ia), (iii) of the Hindu Marriage Act. On account of assault on her on or about 26th January, 2021, the respondent has filed divorce petition on 9th February, 2022, bearing No. HMP 32 of 2022 at Shrirampur.

3. The applicant has filed the present miscellaneous civil application for seeking transfer of proceedings.

4. This Court on 25/11/2022 issued notice to the respondent.

Despite service, the respondent has failed to appear either personally or through advocate.

5. The learned Counsel for the applicant submits that the applicant is a house wife and she has no source of income. She is not even being paid any maintenance. Further, distance between from Shrirampur to Igatpuri is around 150 kms and it takes about 7 to 8 hours to traverse. The applicant therefore submits that the application for transfer be allowed.

6. The learned Counsel for the respondent submits that there is an order dated 28th November, 2022 for granting interim maintenance in the sum of Rs.10,000/- per month. It is submitted that as per the application made by the applicant to the Shrirampur Civil Judge Senior Division on 2nd January, 2023, it is admitted that all the maintenance amounts payable to applicant have been duly received by the applicant save and except a sum of Rs.10,000/-.

7. 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 reported in (2001) 10 SCC 41 : AIR 2002 SC 396*** and ***N.C.V. Aishwarya v. A. S. Saravana Karthik Sha reported in 2022 SCC OnLine 1199*** 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.

8. In the light of the law laid down in the aforecited decisions, the pleadings and materials on record and the totality of the facts and circumstances of this case, particularly that not only will the

Applicant have suffer undue hardship herself but also suffer considerable inconvenience and expense to travel with some companion. Be that as it may, the learned Counsel for the applicant states that there are proceedings for which, the respondent has to visit Igatpuri. Consequently, I am inclined to exercise the discretionary powers of this Court under Section 24 of the Code of Civil Procedure and allow the application for transfer.

9. In view thereof, I am inclined to allow this application in terms of prayer clause (a) and (b).

10. In view of the above I allow the transfer Application as follows:

- i. The proceedings and application made in Divorce Petition No.32/2022 pending before the Shrirampur District Court be stayed pending transfer; and be transferred to the Igatpuri Court.
 - ii. The Registry shall forward a copy of this order to the Shrirampur District Court, with instructions to forthwith transmit all the records of Divorce Petition No.32/2022 between the Respondent and Applicant to the Igatpuri Court preferably within 4 weeks from the receipt of this order.
 - iii. Igatpuri Court shall on receipt of the records of Divorce Petition No.32/2022, fix a date preferably within 3 weeks and issue notice to the parties for proceeding with the matter.
11. All concerned to act on the authenticated copy of this order.

(KAMAL KHATA, J.)