

Ghuge

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

MISCELLANEOUS CIVIL APPLICATION NO.399 OF 2022

Bhavinee Hitesh Prajapati	... Applicant
V/s.	
Hitesh Rameshbhai Prajapati	... Respondent

Mr. Ganesh Kanchanpurkar for the applicant.

Mr. Kuba Wagh a/w Shrusthi Jadhav for the respondent.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 10, 2023

P.C.:

1. The wife has filed present Miscellaneous Civil Application seeking transfer of Marriage Petition No.A-644 of 2022 pending on the file before learned Family Court Bandra to Civil Judge Senior Division, Palghar.
2. The marriage between the applicant and respondent is took place on 25th June, 2019. Out of the said wedlock applicant and respondent have a baby boy. Due to the matrimonial difference, the applicant filed proceedings under the provision of Protection of Women from Domestic Violence Act, 2005 bearing Criminal Application No.11 of 2022 before the learned Judicial Magistrate First Class, Dahanu. The applicant has also brought First Information Report bearing No.113 of 2022 under Section 498-A, 406, 504, 506 read with 34 of the Indian Penal Code, 1860 at

Dahanu. The husband has filed petition for divorce under Section 13 (1)(ia) of Hindu Marriage Act, 1955 before the learned Family Court at Bandra, Mumbai.

3. The applicant has therefore filed present application seeking transfer of proceeding from learned Family Court at Bandra, to learned Civil Judge Senior Division, Palghar.

4. The opponent has filed reply contesting the application denying all contentions raised in the application. Additionally, the opponent has stated facts relevant for the purposes of adjudication of the disputes on merits. Learned advocate for the opponent submitted that there is threat to his life as he was assaulted at Dahanu. According to the learned advocate for the opponent, the applicant has made a false statement on oath.

5. Having considered the submissions made on behalf of both sides, in my opinion, the applicant has made out a case for transfer based on following reasons. a) The distance between Dahanu to Bandra is around 140 kilometers. b) The applicant needs to take care of small child of Two and half years. The transfer would not be inconvenient to the husband as the proceeding under the Domestic Violence Act filed by the wife is already pending before the Court at Dahanu.

6. Insofar, as the objection that there is imminent threat to the life of the opponent is concerned, there is no credible material placed on record to justify such apprehension. The false statement on oath as alleged does not have relevance to the merits of the application. According to the opponent, the father of applicant is a

owner of fleet of cars. The fact that father of wife is not a Rickshaw Driver has no relevance for adjudication of the application.

7. Considering the facts stated in paragraph 10 of application on oath, in my opinion, the pendency of proceedings before learned Family Court at Bandra and attending the said proceeding by the applicant would cause inconvenience to the wife.

8. In view of the recent judgment of the Apex Court in the case of **N.C.V. Aishwarya v. A.S. Sarvana Karthik Sha** reported in 2022 SCC OnLine SC 1199. wherein the apex Court in paragraph No.9 held 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 have to take into consideration the economic soundness of both the parties, the social strata of the spouses and their behavioural 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 life. Given the prevailing socio-economic paradigm in the Indian society, generally, it is the convenience which must be looked at while considering transfer.

9. For the reasons stated, Miscellaneous Civil Application is allowed in terms of prayer clause (b). No costs.

(AMIT BORKAR, J.)