

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

MISCELLANEOUS CIVIL APPLICATION NO. 497 OF 2022

Smt. Dhanashri Shyam Salunkhe	.. Applicant
v/s.	
Shri. Shyam Arjun Salunkhe	.. Respondent

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Mr. Rahul B. Khot for the Applicant.

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CORAM : KAMAL KHATA, J.

DATED : 6TH 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 M.P. No. 319 of 2021 filed by the respondent husband under section (u/s) 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights which is pending before the Civil Judge Senior Division Kalyan to the Family Court, Pune.

2. The Applicant's case is that after her marriage on 23rd December 2012 at Pune, the Applicant gave birth to a daughter on 31st March 2014. During her stay at her matrimonial home, she was subjected to various acts of Domestic Violence by the Respondent. Thereafter, the Respondent filed an Application u/s 9

on 26th March 2021 for restitution of conjugal rights before the Civil Judge, Senior Division at Kalyan, District - Thane which is pending.

3. The learned counsel for the Applicant submitted that the Applicant is residing at paternal home at Pune and has no source of income and is therefore unable to travel from Pune to Kalyan. Besides, the Applicant is unable to leave her small daughter with her aged parents. Besides travel to Kalyan, which is around 300 kms, would take around 12 to 16 hours to and fro, would cause undue hardship and expense. In view of the above, he submitted that the transfer Application be allowed.

4. None appeared for the Respondent though served.

5. 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 *Smita 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 AIR 2022 SC 4318* is that the convenience of the wife which is preferred over the convenience of the husband that has to be looked into, while ordering the transfer of a case from one Court to

another.

6. 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 to depend upon her aged parents to take care of her minor daughter in her absence but will suffer undue hardship and expense to travel from Pune to Kalyan from time to time, 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.

7. It is however made clear that, if a video conferencing facility is available, then on dates when the physical presence of the husband is not required, he may be permitted to attend the proceedings through video conferencing, upon an appropriate application made to the court in that behalf.

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

- i. The proceeding being M.P. No. 319 of 2021 filed by the respondent husband under section (u/s) being application under section 9 of the Hindu Marriage Act, 1955 for

restitution of conjugal rights and pending before the Civil Judge Senior Division, Kalyan District : Thane be stayed pending transfer ; and be transferred to the Family Court, Pune.

ii. The Registry shall forward a copy of this order to the Civil Judge Senior Division, Kalyan, with instructions to forthwith transmit the records of M.P No. 319 of 2019 between the Respondent and Applicant to the Family Court, Pune preferably within 4 weeks from the receipt of this order.

iii. The Family Court, Pune shall on receipt of the records of M.P. No. 319 of 2021, fix a date preferably within 3 weeks and issue notice to the parties for proceeding with the matter.

9. All concerned to act on the authenticated copy of this order.

(KAMAL KHATA, J.)