

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

**MISCELLANEOUS CIVIL APPLICATION NO. 167 OF 2022**

Kaveri Nivesh Mali

.. Applicant

v/s.

Nivesh Vijay Mali

.. Respondent

...

Mr. Prashant C. Mohite i/by Ms. Vaishali Mane for the Applicant.

...

**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 H.M.A. No. 60 of 2021, filed by the respondent husband under section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights which is pending before the Civil Judge, Senior Division at Vaduj, Satara to the Family Court, Pune.

2. The Applicant's case is that after her marriage on 14<sup>th</sup> March 2018 at Pune, the Applicant gave birth to a son on 18<sup>th</sup> December 2018. During her stay at her matrimonial home, she was subjected to various acts of Domestic Violence by the Respondent and his family members. Aggrieved by the acts she

filed an application under section (u/s) 12 of the Protection of Women Against Domestic Violence Act, 2005 against the Respondent and his family bearing M.A. No. 560 of 2021 at Pune on 4<sup>th</sup> February 2021. The said application is pending. Thereafter, the Respondent filed an Application u/s 9 on 26<sup>th</sup> March 2021 for restitution of conjugal rights.

3. The Learned Counsel for the Applicant states that she is a working women and is therefore unable to leave her small child with aged parents. Besides travel to Vaduj, which is around 160.7 kms would take around 8 hours to and fro, and therefore cause undue hardship and expense. In view of the above, the learned counsel for the Applicant submitted that the transfer Application be allowed.

4. No one 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 son in her absence but will suffer undue hardship and expense to travel from Pune to Vaduj 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 H.M.A. No. 60/2021, u/s 9 of the Hindu Marriage Act, 1955 filed and pending before the Civil Judge Senior Division Vaduj District : Satara 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 Vaduj, District: Satara with instructions to forthwith transmit the records of H.M.A. No. 60/2021 between the Applicant and the Respondent 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 H.M.A. No. 60/2021, 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.)**