

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY*****CIVIL APPELLATE JURISDICTION*****MISCELLANEOUS CIVIL APPLICATION NO. 460 OF 2022****Rajashree Krushnanand Kobarane****..... Applicant****VERSUS****Krushnanand Gorakshnath Kobarane****..... Respondent**

Mr. Anuj Tiwari i/b. Mr.Vivek V. Salunke for the Applicant.

**CORAM: ABHAY AHUJA, J.****DATE : 8<sup>th</sup> SEPTEMBER, 2023****P.C:-**

By this application, the Applicant wife is seeking transfer of the divorce proceedings being Marriage Petition No. 495 of 2021 filed by the respondent husband before the Civil Judge, Senior Division, Ahmednagar to the Family Court at Pune.

2. Mr.Tiwari, learned counsel for the applicant would submit that the marriage between the applicant and the respondent was solemnized on 29<sup>th</sup> January, 2017 at Pune as per Hindu rites and rituals. That on 26<sup>th</sup> April, 2018, a girl child was born out of the said wedlock. However, due to the harassment and cruelty by the respondent and his family members, on 2<sup>nd</sup> May, 2019 at 1.30 a.m. the respondent drove

away the applicant with one year old child out of the matrimonial home and since then the parties are living separately.

3. Thereafter, the applicant has filed a divorce proceedings in the Family Court at Pune on 8<sup>th</sup> December, 2021. Learned counsel would submit that the respondent husband has also filed divorce proceedings on 9<sup>th</sup> December, 2021 at Ahmednagar; that the wife has also filed proceedings under section 125 of the Code of Criminal Procedure, 1973 on 24<sup>th</sup> February, 2022 at Pune. Learned counsel would submit that domestic violence proceedings have also been filed by the wife for maintenance and protection at Pune.

4. Learned counsel would submit that the applicant is in service, however, she receives a meagre salary which is not sufficient for her maintenance nor for the maintenance of her minor daughter. Learned counsel would submit that the applicant has to take care of her father and mother as well as grandmother in addition to the minor daughter. He would submit that the parents and grandmother are suffering from various age related ailments which she has to take care. Learned counsel also submits that the applicant apprehends harm and threat at

the instance of the respondent if she has to travel to Ahmednagar and also it would be difficult to leave the minor child alone and even to take her along.

5. Learned counsel would submit that the distance between Pune and Ahmednagar is 120 kms one way and therefore it would not only be inconvenient for her to travel to Ahmednagar but also cause undue hardship as mentioned above.

6. Notice sent to the respondent has been returned with the remark “Refused”, which is good service. Today also when the matter is called out, none appears for the respondent.

7. It is settled law that while deciding matters under section 24 of the Code of Civil Procedure, 1908 (the “CPC”) for transferring matters, convenience of the wife is of paramount consideration. As noted above, considering the responsibilities of the applicant wife of attending to her service, care of a one year old child, of parents, grandmother and also the distance between Pune and Ahmednagar, not to talk of the threat perceived by the Applicant upon visiting Ahmednagar, it would not

only be inconvenient for the wife to travel to Ahmednagar one way 120 kms every time when the matter is listed, but also cause undue hardship.

8. In the absence of any submissions made on behalf of the respondent, the submissions made on behalf of the applicant remain unchallenged.

9. The Hon'ble Supreme Court in the case of ***N.C.V. Aishwarya Vs. A.S. Saravana Karthik Sha***, ***SCC Online SC 1199 (2022)*** has clearly emphasised that the convenience of the wife has to be considered to meet the ends of justice while considering petition under section 24 of the CPC. Paragraph 9 is relevant and is quoted 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 are called upon to consider the plea of transfer, the 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 like. Given the prevailing socio-economic paradigm in the Indian society, generally, it

is the wife's convenience which must be looked at while considering transfer."

(Emphasis Supplied)

10. Moreover, the wife has also filed a divorce petition before the Family Court at Pune. Therefore, it would be in the interests of justice that the divorce petition filed by the husband at Ahmednagar is transferred to the Family Court at Pune and both the Petitions are heard together in order to avoid any conflicting decisions on a similar set of facts and prayers.

11. In this view of the matter, this Court is of the view that the ends of justice would be met with if the Marriage Petition No. 495 of 2021 filed by the respondent in the Court of Civil Judge, Senior Division at Ahmednagar is transferred to the Family Court at Pune.

12. Application is made absolute in terms of prayer clause (a) which reads thus :

- a. This Hon'ble Court may be pleased to transfer the Marriage Petition No.495 of 2021 filed by the present Respondent against the Applicant in the Court of Ld. C.J.S.D., at Ahmednagar to the Ld. Family Court at Pune;

13. It is made clear that any observations on the merits of the dispute between the parties is only to consider this application which shall not influence the trial or disposal of the Marriage Petitions which are to be tried and decided on their own merits, uninfluenced by the said observations.

**[ABHAY AHUJA, J.]**