

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

MISCELLANEOUS CIVIL APPLICATION NO. 42 OF 2023

Rafiya Bi Shaikh. ... Applicant
v/s.
Abdul Samad Shaikh & ors. ... Respondents.

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Mr. Sasndeeep Kumar Singh, SKS Juris, for the Applicant.

Mr. Kunal Bhanage a/w. Ms. Sonal H. Mishal a/w. Noorjah Shaikh,
for respondents.

Mr. Abdul Sasmad Shaikh, Respondent No. 1 present through
Video Conferencing.

Mr. Zahida Ally Muzawar Shaikh, Respondent No. 2 present
through Video Conferencing.

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CORAM : KAMAL KHATA, J.

DATED : 18TH JULY 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 Marriage Petition (M.P.) No. 40/2020/III, which is pending before the Civil Judge Senior Division at Margao, Goa to the Family Court, at Pune.

2. The Applicant's case is that her marriage took place on 20th January, 2017 at Goa. Out of wedlock, the child was born on 5th

April, 2019. The applicant filed an application dated 17/12/2019 under section 12 of the Protection of Women from Domestic Violence Act, 2005 (DV Act). Due to marital discord, the applicant left the matrimonial home to reside with her parents in Pune on 18/12/2019. The applicant has filed divorce petition in Goa. Respondent No. 1 filed a Custody Petition at Goa on 25th February, 2022.

3. Learned Counsel for the applicant submitted that the applicant is living with her uncle. She has undertaken a job at Pune. The child is studying in Pune. It would therefore be extremely inconvenient and difficult for her to leave job and the child and/or take the child along with her together each time she has to attend the court dates. She accordingly, prays that the matter be transferred from Goa to Pune.

4. On the other hand, the learned counsel for the respondent submits that the husband is in the UAE and his parents who are the power of attorney holders have to attend the matter for him. This causes them a lot of inconvenience. The learned Counsel for the respondent submits that all the applications have been filed in Goa. She has a parental home at Goa, where her mother resides and therefore, it would not be inconvenient for her to attend court proceedings. Moreover, it is submitted that they are willing to give

her travelling charges and accommodation charges for her to attend court in Goa. The learned counsel accordingly requests the application be rejected.

5. In the alternative, the Learned Counsel for the respondent submits that since the husband is in UAE and since the parents are residents of Goa and are aged, Video Conferencing facility may be made available to them by the Court at Pune when their physical presence is not inevitable. Besides, their Counsel would also not have to travel from Goa to Pune and that would save enormous expenses for them.

6. 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*** is 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.

7. In my view the applicant would suffer much greater hardship and inconvenience to travel to Goa as opposed to the respondent. Besides the applicant has to presently fend for herself

as well as for her minor child. The balance of convenience is clearly in favour of the applicant. In view of the above, I allow the transfer Application as follows:

- i. The application is allowed in terms of prayer clause (a).
- ii. The proceedings and application made in M.P. No. 40/2020/III pending before the Civil Judge Senior Division at Margaon, Goa, Criminal Case No. PWD/01/2020/II pending before the Additional Judicial Magistrate First Class, Margao, Goa and Portuguese Civil Miscellaneous Application No. 101/2022/III pending before Civil Judge Senior Division at Margao, Goa be stayed pending transfer; and be transferred to the Family Court, Pune.
- iii. The Registry shall forward a copy of this order to the Civil Judge Senior Division at Margaon, Goa and Additional Judicial Magistrate First Class, Margao, Goa with instructions to forthwith transmit all the records of M.P. No. 40/2020/III, Criminal Case No. PWD/01/2020/II and Portuguese Civil Miscellaneous Application No. 101/2022/III between the Respondents and Applicant to the Family Court, Pune, preferably within 4 weeks from the receipt of this order.

- iv. The Family Court, Pune shall on receipt of the records of M.P. No. 40/2020/III, Criminal Case No. PWD/01/2020/II and Portuguese Civil Miscellaneous Application No. 101/2022/III, fix a date preferably within 3 weeks and issue notice to the parties for proceeding with the matter.
- v. Family Court, Pune may consider granting permission to the respondents and also permit their counsel to appear in court through video conferencing facility when such application is made to save the respondents from inconvenience and expense if it is feasible and their physical presence is not inevitable.
8. All concerned to act on the authenticated copy of this order.

(KAMAL KHATA, J.)