

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

MISCELLANEOUS CIVIL APPLICATION NO. 4 OF 2023

Dr. Pooja V. Nikam. ... Applicant
v/s.
Dr. Vishal S. Nikam. ... Respondent

...
Mr. Anuj Tiwari, for the Applicant.

Ms. Indrayani Patani, for respondent.

...

CORAM : KAMAL KHATA, J.

DATED : 26TH 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 Petition No. A-692 of 2022 which is pending before the Family Court, Nashik to Family Court, Pune.

2. The Applicant's case is that her marriage was solemnized on 29/1/2017 at Nashik. Out of a wedlock, a girl child born on 4th November, 2020. Due to matrimonial differences, the applicant left matrimonial home on 7th May, 2022. The applicant filed divorce proceedings on 8th September, 2022 before Family Court at Pune. On the other hand, the respondent has filed a petition for

restitution of conjugal rights before the Family Court at Nashik on 21/9/2022. The applicant submits that she has no relatives at Nashik and she will have inconvenience to travel to Nashik with or without child. The distance between the Nashik and Pune is 210 kms. and to travel with the child or without would cause great hardship and inconvenience to the applicant.

3. On the other hand, learned Counsel for the respondent submitted that it is not out of vengeance that he filed the application at Nashik, but the only jurisdiction available to him was Nashik Court and therefore, he has filed petition for restitution of conjugal rights in Nashik Court. It is submitted that the application for restitution of conjugal rights was filed prior to the application for divorce. It is submitted that the respondent is an orthopedic surgeon and has to perform 3 to 4 surgeries and small procedures every day. It is submitted that he is going to Pune for two cases and to meet child and in fact, to go once again in the matter one more day would cause him inconvenience. It is submitted that the applicant has come to Nashik atleast on two occasions and since she is an educated lady, it is not inconvenient on the ground of her not anyone relative. It would not be sufficient ground to allow the application. It is submitted that being a lady would not be a ground alone for allowing application. Both parties'

convenience and status has to be seen. The learned Counsel for the Respondent refers to the case in the case of ***Anindita Das v/s. Srijit Das***¹ and submits that in view of this, the application should be rejected.

4. The learned Counsel for the applicant in rejoinder submits that the applicant is not working and is looking after the child. He submitted that it is true that the help is taken for looking after the child for a period of 4 to 5 hours of every day. However, rest of the day, she is looking after the child.

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 ***Sumita Singh v. Kumar Sanjay***² and ***N.C.V. Aishwarya v. A. S. Saravana Karthik Sha***³ 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, specially in a case where there is minor child.

6. In this case, the daughter is aged only around 2 and half years old. It would cause tremendous inconvenience for the applicant to travel with or without the child and in my view, this

1 (2006) 9 SCC 197

2 (2001) 10 SCC 41 : AIR 2002 SC 396

3 2022 SCC OnLine 1199

would be the sufficient ground to allow the application. The respondent is in any way visiting at Pune for meeting the child as well as for attending the matters at Pune. Perhaps, if the matters are transferred and heard together, it would help both the applicant as well as respondent to dispose of their matters at the earliest. Merely offering the applicant charges to visit Nashik and or accommodation would not alone suffice in this case. In view thereof, I am inclined to allow this application.

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

- i. The Application is allowed in terms of prayer clause (B).
- ii. The proceedings and application made in Petition No. A-692 of 2022 pending before the Family Court, Nashik be stayed pending transfer; and be transferred to the Family Court, Pune.
- iii. The Registry shall forward a copy of this order to the Family Court, Nashik, with instructions to forthwith transmit all the records of Petition No. A-692 of 2022 between the Respondent 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 Petition No. A-692 of 2022, 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 respondent and also permit the counsel to appear in court through video conferencing facility when such application is made to save the respondent 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.)