

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

MISCELLANEOUS CIVIL APPLICATION NO.508 OF 2022

Nanda Varsha Vinod Khairnar	... Applicant
Vs.	
Vinod Devidas Khairnar	... Respondent

Ms. Manjiri Parasnis, Advocates for the Applicant.
None for the Respondent.

**CORAM : ABHAY AHUJA, J.
DATE : 13 DECEMBER, 2023.**

P.C. :

1. This is an application seeking transfer of divorce proceedings filed by the Respondent-husband before the Court of Civil Judge Senior Division, Kalyan to the Court of Civil Judge Senior Division, Amalaner.

2. Ms. Manjiri Parasnis, learned counsel for the Applicant would submit that the Respondent is neither present nor represented despite service although the Respondent appears before the Judicial Magistrate First Class (JMFC) Court, at Parola in the proceedings filed by the wife under 498A of the Criminal Procedure Code, 1973 as well as under the Domestic Violence Act, 2005.

3. Learned counsel submits that therefore, as recorded in the earlier orders

of this Court, this Court hear the Applicant and pass appropriate orders.

4. Ms. Parasnis, learned counsel for the Applicant submits that the marriage between the Applicant and the Respondent was solemnized at Parola on 28th April, 2019 as per Hindu rites. That there is no child out of the wedlock. Learned counsel submits that due to the ill-treatment of the Respondent and their family members, the Applicant left the matrimonial home on 21st January, 2020. Learned counsel submits that the Applicant has filed proceedings under the domestic violence before the JMFC, Parola on 21st August, 2020 and a private complaint before the same Court under 498A of the Cr.PC. on 23rd December, 2020. That on 9th February, 2022, the Respondent-husband has filed divorce proceedings before the Court of Civil Judge Senior Division, Kalyan. Learned counsel submits that thereafter on 21st August, 2020 before a stay was granted by this Court, the stage before the Kalyan Court was for evidence of the Respondent-husband after the Applicant has filed written statement.

5. Learned counsel submits that although the Applicant is a graduate but is unemployed and totally dependent on her mother who is a pensioner, residing with her. It is submitted that the Applicant has no means to travel to Kalyan nor anyone to accompany her. That the distance from Jalgaon to Kalyan is 385.4 kms. and the distance from Jalgaon to Amalaner is 57 kms. and from Amalaner to Parola is 22 kms. Learned counsel submits that to travel from

Parola to Kalyan the Applicant has to travel by train and also to take a bus. That in the event she does not get booking of the train, then that will entail great hardship to her. Learned counsel submits that there are already two cases filed by the Applicant in Parola, where the Respondent is attending. Therefore, it will not only be inconvenient for the Applicant to travel from Parola to Kalyan but also cause undue hardship to her. On the other hand, the Respondent is graduate and earning a salary of Rs.1,00,000/- and therefore, the Respondent can very well afford to travel to Amalaner, if the divorce petition is transferred from Kalyan to Amalaner. Learned counsel submits that at the time of filing of this application no interim maintenance was also directed to be paid to the Applicant.

6. Learned counsel submits that in view of the principles laid down by the Hon'ble Supreme Court in the cases of **N.C.V. Aishwarya Vs. A.S. Saravana Karthik Sha**¹ as well as **Rajani Kishor Pardeshi Vs. Kishor Babulal Pardeshi**², this Court transfer the divorce proceedings filed by the husband before the Court of Civil Judge Senior Division, Kalyan to the Court of Civil Judge Senior Division, Amalaner.

7. I have heard the learned counsel and also perused the application. The Respondent though served has chosen to remain unrepresented and as such the

1 AIR 2022 SC 4318

2 2005(12) SCC 237

allegations and submissions made on behalf of the Applicant have gone unchallenged.

8. The Hon'ble Supreme court in the case of **N.C.V. Aishwarya Vs. A.S.**

Saravana Karthik Sha (supra) has in paragraph 9 observed 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)

9. In the case of **Rajani Kishor Pardeshi Vs. Kishor Babulal Pardeshi (supra)**

the Hon'ble Apex Court has observed in paragraphs 3 and 4 as under :

“3. The husband opposes the transfer on the ground that it is equally inconvenient for him to go to Satana and that he is willing to pay the expenses for her travel to Mumbai.

4. In this type of matter, the convenience of the wife is to be preferred over the convenience of the husband. Hindu Marriage Petition No.6 of 2004, Kishor Babulal Pardeshi v. Rajani Kishor Pardeshi pending before the Court of Civil Judge, Senior Division at Panvel, Mumbai, Maharashtra is transferred to the Family Court of proper jurisdiction at Satana, Madhya Pradesh.”

(Emphasis Supplied)”

10. The law of transfer of such matters is clear. Ergo it is the convenience of the wife that has to be seen and between the convenience of the husband and the convenience of the wife, it is the convenience of the wife that has to be preferred.

11. Applying the aforesaid principles to the facts of this case, I am of the view that ends of justice would be met, if the divorce proceedings pending before the Court at Kalyan are transferred to the Court of Civil Judge Senior Division, Amalaner.

12. The Application stands allowed in terms of prayer clause (a) which reads thus:-

“This Hon’ble Court may be pleased to transfer Hindu Marriage Petition (H.M.P) 308/2022 filed by the Respondent in the Court of Ld. C.J.S.D., Kalyan to the Ld. C.J.S.D. Amalaner under Section 24 of the Code of Civil Procedure, 1908.”

13. It is made clear that any observation(s) 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 Divorce Petition which is to be tried and decided on its own merits uninfluenced by the said observation(s).

(ABHAY AHUJA, J.)