

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

MISCELLANEOUS CIVIL APPLICATION NO. 18 OF 2023

Mrs. Sadita Ganesh Modi
@ Sneha Ramkrishna Sadadekar. ... Applicant
v/s.
Shri Ganesh Divakar Modi. ... Respondent

...
Mr. Pandurang Parkar, for the Applicant.

Mr. Vinay Tendulkar, for Respondent.

...

CORAM : KAMAL KHATA, J.

DATED : 3RD AUGUST, 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. 87 of 2022, which is pending before the Joint Civil Judge Senior Division, Kalyan, Dist. Thane to the Family Court at Bandra, Mumbai.

2. The Applicant's case is that on 19th May, 2019, the applicant got married at Matunga, Mumbai as per the Hindu Vedic Rites. There are no issues out of wedlock. On 13th February, 2020 on account of cruelty meted out to her, the applicant left the matrimonial home. The applicant filed Petition for restitution of

conjugal rights in July, 2022 at Family Court, Bandra bearing Petition No. A-2170 of 2022.

3. On the other hand, the respondent filed Marriage Petition No. 86 of 2022 before the Joint CJSD, Kalyan for divorce on 15th December, 2022. The applicant submits that she has been residing with parents at Andheri. She is not employed and has no independent source of income. It is submitted that no maintenance has been granted to her. It is submitted that the matrimonial home being at Bhandup, the jurisdiction would be with Family Court, Bandra to entertain their petition. It is therefore, submitted that the matter be transferred from Joint CJSD, Kalyan to Family Court at Bandra.

4. On the other hand, the learned Counsel for the respondent submits that since the applicant wanted to stay separately from his parents that they shifted from their matrimonial home at Bhandup to Dombivali. The respondent stayed with the applicant for a period from January to March, 2020. It is submitted that since they resided at Dombivali, jurisdiction to file for divorce was with Joint CJSD, Kalyan it was filed there.

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 Sanjay¹ and N.C.V. Aishwarya v. A. S. Saravana Karthik Sha² 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.

6. In my view, there would be no prejudice caused to the respondent if this application is allowed. It is the case of the respondent that they had shifted to Dombivali at the instance of the applicant and the applicant has since February 2020 admittedly deserted him. Hence there would be no hindrance to him to move back to Bhandup. Consequently, no prejudice would be caused to the respondent if the matter is transferred from Joint CJSD, Kalyan to Family Court, Bandra.

7. In view of the above, I pass following order :

- i. The transfer application is allowed in terms of prayer clause (a).
- ii. The proceedings and application made in M.P. No. 87 of 2022 pending before the Joint Civil Judge Senior Division, Kalyan be stayed pending transfer; and be transferred to the Family Court, Bandra, Mumbai.
- iii. The Registry shall forward a copy of this order to the Joint Civil Judge Senior Division, Kalyan, with instructions to forthwith transmit all the records of M.P

¹ (2001) 10 SCC 41 : AIR 2002 SC 396

² 2022 SCC OnLine 1199

No. 87 of 2022 between the Respondent and Applicant to the Family Court, Bandra, Mumbai, preferably within 4 weeks from the receipt of this order.

iv. The Family Court, Bandra, Mumbai shall on receipt of the records of M.P. No. 87 of 2022, fix a date preferably within 3 weeks and issue notice to the parties for proceeding with the matter.

v. Family Court, Bandra Mumbai may consider granting permission to the respondent 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 absolutely necessary.

8. All concerned to act on the authenticated copy of this order.

(KAMAL KHATA, J.)