

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO. 78 OF 2023

Mrs. Swarupa Vinod Thorat
v/s.

.. Applicant

Mr. Vinod Jalinder Thorat

.. Respondent

...

Mr. Jigar Agarwal i/b Mr. Sidhant C. Saravade for the applicant.

None for the respondent.

...

CORAM : KAMAL KHATA, J.

DATED : 17th AUGUST, 2023.

P.C. :

1. This Miscellaneous Civil Application is filed by the Applicant wife under section 24 of the Civil Procedure Code 1908, for transfer of Marriage Petition no.295/2022 under section 13 (1), (i) of Hindu Marriage Act filed by respondent husband and Misc. Civil Application No. 130 of 2022 filed by the respondent husband from Hon'ble Senior Division, Civil Court, Pandharpur and Adhoc District Judge-1, Add. Sessions Judge, Pandharpur, respectively to Civil Judge, Senior Division, Thane.

2. The Applicant's case is that the marriage took place on 25th September 2022 at Solapur. They have two issues out of the said wedlock. On 3rd August 2011 daughter was born and on 1st February 2017, son was born. On account of marital discord, on 3rd September, 2022, the respondent filed Divorce Petition H.M.P. No. 295 of 2022 before the Civil Judge, Senior Division, Pandharpur. On 9th September, 2022 the respondent filed Custody Petition before the Adhoc District Judge - 1, Add. Sessions Judge Pandharpur. On 3rd November 2022 the applicant filed Domestic Violence proceeding against the respondent.

3. Learned counsel for the applicant submits that the distance between Solapur to Thane is around 390 kms., which would take 8 to 9 hours to and fro. He submits that transfer is sought on the ground of the distance and that time taken to travel to and fro. He submits that she is not receiving any interim maintenance nor any travel expenses are offered. She is also not employed and is dependent on her brother for her livelihood. In addition thereto she has to take care of two children especially a minor son who is just five years old. It is difficult for the mother to manage the 5 year old child for prolonged hours and travel that would necessitate an overnight stay. He submits that the husband is well settled in

life. It would be convenient for him to travel from Pandharpur to Thane. He further submits that the application for transfer be allowed.

4. The respondent though served has chosen to remain absent.
5. I am of the view that the balance of convenience is in favour of the applicant wife. The interest of the husband can be taken care of, if the Court grants video conferencing facility on the dates on which his physical presence is not absolutely necessary. In view of the hardship, inconvenience and expense that would be caused to the applicant wife in the present case I allow this application.
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*** 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. In view of the above, I am inclined to allow this application

and pass the following order;

(i) Application is allowed in terms of prayer clauses (a)

(ii) The proceedings and application made in M.P. No. 295/2022 pending before Hon'ble Senior Division, Civil Court Pandharpur **and Misc. Civil Application No. 130 of 2022 pending before Adhoc Dist Judg - 1 Add. Sessions Judg, Pandharpur** be stayed pending transfer; and be transferred to Civil Judge, Senior Division, Thane.

(iii) The transfer may be effected within a period of four weeks and upon receipt of the papers and proceedings the Civil Judge, Senior Division, Thane, shall give notice to the parties, preferably within three weeks, to proceed with their respective matters.

(iv) Civil Judge, Senior Division, Thane, may grant video conferencing facility to the respondent, in the event he applies for and if his physical presence is not absolutely necessary.

(v) All concerned to act on the authenticated copy of this order.

(KAMAL KHATA, J.)

Note: This order is modified as per order dated 7th October 2023. The corrections are shown in bold and Italics and underline.