

AGK

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

MISCELLANEOUS CIVIL APPLICATION NO.3 OF 2023

Prajakta Rahul Yadav

... Applicant

V/s.

Rahul Ashok Yadav

... Respondent

Mr. Sachin S. Padaye for the applicant.

Mr. Shashikant Damodarlal Chandak with Ms. Kanchan
Shashikant Chandak for the respondent.

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CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 3, 2023

P.C.:

1. The applicant/wife has filed present miscellaneous civil application seeking transfer of proceedings pending before the Court in Ahmednagar to the Family Court, Nashik.

2. The marriage between applicant and respondent was solemnized on 22nd March 2014. Due to matrimonial differences, the applicant/wife lodged N.C. No.485 of 2015 under section 323, 504 and 506 of the Indian Penal Code, 1860 (hereafter "IPC", for short) against the respondent in Beed Police Station. She also filed FIR No.272 of 2015 in Upnagar Police Station, Nashik under section 498A, 406, 323, 504, 5-6 and 34 of IPC. Accordingly, R.C.C. No.179 of 2018 was instituted against the respondent and his family members before the Court of Judicial Magistrate First

Class, Nashik Road.

3. The respondent on 28th April 2015 filed petition for divorce before the learned Civil Judge Senior Division, Sangamner, District Ahmednagar under section 13(1)(i-a) of the Hindu Marriage Act, 1955. The applicant filed Criminal Application No.506 of 2016 before the learned Judicial Magistrate First Class, Nashik under section 12 of the Protection of Women from Domestic Violence Act. On 1st February 2017, the applicant filed Criminal Application No.E-98 of 2017 before the Family Court, Nashik under section 125 of the Criminal Procedure Code, 1973. The applicant has, therefore, filed present miscellaneous civil application seeking transfer of proceedings pending in Sangamner to the Court at Nashik.

4. This Court on 12th January 2023 issued notice to the respondent, in pursuance of which the respondent filed reply stating that the present application has been filed to harass the respondent. The applicant has suppressed material fact and has not approached this Court with clean hands. Since the proceedings are pending before the Court at Sangamner, the Aurangabad Bench of this Court has jurisdiction to entertain the present miscellaneous civil application.

5. Having heard learned advocates for the parties, considering the reasons stated by the applicant, the miscellaneous civil application deserves to be allowed.

6. In so far as the submission of the learned advocate for the respondent that the Court at Sangamner is situated within the

territorial jurisdiction of the Aurangabad Bench of this Court, the Principal Bench cannot entertain application under section 24 of the Criminal Procedure Code, 1973, this Court in Miscellaneous Civil Application No.394 of 2022 (Heena Ateeb Shaikh v. Shaikh Ateed Shaikh Shakil) decided on 3rd February 2023 has negated such contention and, therefore, for the reasons stated in the said order, there is no substance in the argument that the Principal Bench of this Court has no power to transfer proceedings pending before the Court subordinate to the Aurangabad Bench of this Court.

7. The applicant has stated on oath that she is dependent and is residing with her parents of advance age suffering from old age ailments and, therefore, she cannot travel to Sangamner. It is stated that the applicant is unemployed housewife and has no source of income. She is solely dependent on her old age senior citizen parents. The distance between Nashik and Sangamner is around 70 kms. The respondent is attending proceedings filed by the applicant under the provisions of DV Act and IPC and under section 125 of the Criminal Procedure Code before the Family Court at Nashik. Therefore, it will be in the interest of husband also that the proceedings are transferred to the Family Court at Nashik.

8. Reliance is placed on the judgment of the Apex Court in the case of **N.C.V. Aishwarya v. A.S. Sarvana Karthik Sha** reported in 2022 SCC OnLine SC 1199. The Apex Court in paragraph 9 has observed thus:

- “**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 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 life. Given the prevailing socio-economic paradigm in the Indian society, generally, it is the convenience which must be looked at while considering transfer.
- 9.** Considering parameters laid down by the Apex Court in the case of **N.C.V. Aishwarya** (supra), in my opinion, the applicant has made out a case for transfer of proceedings.
- 10.** The miscellaneous civil application is, therefore, allowed in terms of prayer clause (b). No costs.

(AMIT BORKAR, J.)