



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

MISCELLANEOUS CIVIL APPLICATION NO.51 OF 2023

Mrs. Megha Mehul Thakkar
@ Megha Rajesh Masrani
Vs.

... Applicant

Mr. Mehul Rajesh Thakkar

... Respondent

Mr.Rohan D. Kaiche, Advocate for the Applicant.
None for the Respondent.

CORAM : ABHAY AHUJA, J.
DATE : 11 SEPTEMBER, 2023.

PC. :

1. This is an application filed under section 24 of the Code of Civil Procedure, 1908 ("CPC") by Applicant-wife against the Respondent-husband for transfer of Petition No.A-2214 of 2022 for divorce pending before the Family Court at Bandra to Family Court at Nasik.

2. Mr.Rohan D. Kaiche, learned counsel for the Applicant would submit that despite various opportunities granted by this court, none has been appearing for the Respondent. Learned counsel draws the attention of this court to orders dated 17th August, 2023 as well as 28th August, 2023 and submits that the court has clearly directed that if none appears for the Respondent, this court will proceed to pass appropriate orders today.

3. It is observed that the Respondent though served, has chosen to remain absent and not represented.

4. The marriage between the Applicant and the Respondent was solemnized on 19th January, 2012, however, due to physical assault and abuse by the Respondent, the Applicant was forced to leave matrimonial home of the Respondent in Mumbai and to return to her parental home in Nasik in September, 2019. It is submitted that thereafter on 22nd May, 2022 the Applicant had come to Mumbai at her matrimonial home to take her belongings but she was abused and beaten up by the Respondent, pursuant to which the Applicant had lodged N.C. complaint with Kandiwali police station. Thereafter, Respondent has filed the divorce petition before the Family Court at Bandra under section 13(1)(i-a) of the Hindu Marriage Act and on 10th November, 2022, summons was issued to the Applicant to appear before the Family Court at Bandra. Learned counsel would submit that the Applicant has attended the divorce proceedings at Bandra Court twice and the present stage is for filing of written statement. Learned counsel would submit that the next date before the Bandra Court is 22nd December, 2023.

5. It is submitted that the Applicant is presently staying with her parents. It is submitted that the Applicant is employed in Nasik and is earning about Rs.10,000/- to Rs.12,000/- per month. Learned counsel would submit that

with her income she not only has to take care of herself but also support her aged parents. He submits that the distance between Nasik and Mumbai is about 200 kilometers one way and for the Applicant to leave her aged parents and come to Mumbai every time the matter is listed is becoming inconvenient and also causing undue hardship. Learned counsel would submit that the Applicant has also lodged a complaint against the Respondent under the Protection of Women from Domestic Violence Act, 2005 before Judicial Magistrate First Class, Nasik which is pending and as far as he is aware, the matter is at evidence stage. Learned counsel would submit that due to the financial and family condition of the Applicant, it would be very inconvenient for her to travel to Mumbai and also stay in hotel/rest-house as she would not be able to afford the same. He therefore submits that the divorce petition filed by the Respondent before the Family Court at Bandra be transferred to the Family Court at Nasik.

6. I have heard Mr.Rohan D. Kaiche, learned counsel for the Applicant-wife and also perused the application. The Respondent though served, has neither chosen to remain present nor is represented despite opportunities as recorded in previous orders of this court.

7. It is settled law that in matters pertaining to transfer under section 24 of the CPC preferred by a wife, the convenience of the wife has to be considered. The Hon'ble Supreme court in the case of **N.C.V. Aishwarya Vs. A.S. Saravana**

Karthik Sha¹ has highlighted this very aspect. Paragraph No.9 of the said decision is usefully quoted 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)

8. Considering the aforesaid facts and the law settled by the Hon’ble Supreme Court, this court is inclined to allow the application.

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

“This Hon’ble Court be pleased to transfer of the Petition A - 2214 of 2022 filed by the Respondent under the provisions of section 13(1)(i a) of Hindu Marriage Act, 1955 filed before the Hon’ble Family Court at Bandra seeking Divorce to the Hon’ble Family Court, Nashik.”

10. It is made clear that any observations on the merits of the dispute between the parties is only to consider this application which shall not influence

1 SCC Online SC 1199 (2022)

the trial or disposal of the Divorce Petition which is to be tried and decided on its own merits uninfluenced by the said observations.

(ABHAY AHUJA, J.)