

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISCELLANEOUS CIVIL APPLICATION NO.10 OF 2023

SHILPA TUSHAR SANGLE)
MAIDEN NAME SHILPA SUNIL KANGANE)...APPLICANT

V/s.

TUSHAR SANJAY SANGLE)...RESPONDENT

Ms. Kalyani M. Mangave a/w. Mr. Vikrant Khare and Mr. Prateek Sabrad, Advocate for the Applicant.

CORAM : ABHAY AHUJA, J.

DATE : 1st DECEMBER, 2023

PC. :

1. Today, when the matter is called out, Ms.Mangave, learned Counsel, appears for the Applicant and submits that she has taken instructions from the Applicant and the Applicant would not be satisfied with the video conferencing facility granted to the Applicant by the Pune Court on dates when her presence is not required and insists that the matter be heard.

2. The Respondent, though served, has chosen to remain absent nor is represented.

3. Ms.Mangave, learned Counsel for the Applicant, would submit that the marriage between the Applicant and the Respondent was solemnized on 24th April 2019 as per Hindu marriage rituals at Nashik. That, out of the said wedlock, they have a daughter, who is today 3 years old. Ms.Mangave would submit that although the Applicant is qualified as an Engineer, she is at the moment unemployed staying with her parents and fully dependent on them. That, the Applicant's aged parents:father is retired from a government job and mother is a housewife and barely managing to support her and her daughter. That, the distance between Nashik to Pune is 220 kilometers one way and it takes twelve hours to and fro between Nashik to Pune. Learned Counsel submits that with the girl child of 3 years to take care with literally no source of income of her own, being dependent on her parents, it is not only inconvenient for the Applicant to travel this distance but also causes undue hardship. Learned Counsel submits that in order to save the marriage, the Applicant has filed proceedings for restitution of conjugal rights before the Family Court, Nashik and also Domestic Violence proceedings have been filed before the Judicial Magistrate, First Class, Nashik, three years before the filing of the Divorce Petition by the Respondent - husband. Learned Counsel would submit that two months back a meagre maintenance amount of Rs. 5,000/- per

month was directed by the Judicial Magistrate, First Class, Nashik to be paid to the Applicant. However, that has also not been paid by the Respondent-husband. Learned Counsel would submit that in the Divorce proceedings filed by the Respondent-husband, issues have been framed whereas in the proceedings for restitution of conjugal rights in the Family Court at Nashik, the issues are yet to be framed. Learned Counsel submits that in order to avoid contradictory verdicts on the same set of facts as well as multiplicity of proceedings, it would be in the interest of justice to have both the proceedings decided by the Family Court, Nashik, and therefore, urges this Court to transfer the Divorce proceedings filed by the Respondent-husband before the Court of Civil Judge, Senior Division, Pune to the Family Court at Nashik.

4. Learned Counsel has relied upon the decision of the Hon'ble Supreme Court in the case of *N.C.V. Aishwarya Vs. A.S. Saravana Karthik Sha*¹ as well as the decisions of this Court in the case of *Trishala Vaibhav Jain vs. Vaibhav Manoj Jain*² and *Priyanka Rahul Patil vs. Rahul Ravindra Patil*³ in support of her contentions.

1 SCC Online SC 1199 (2022)

2 2023 SCC Online Bom 1793

3 2023 SCC Online Bom 1982

5. The Respondent-husband has chosen neither to remain present nor be represented, and therefore, the submissions and allegations made in the Application remain unchallenged.

6. The Hon'ble Supreme Court in the case of ***N.C.V. Aishwarya Vs. A.S. Saravana Karthik Sha (supra)*** has emphasized that in proceedings of this nature, it is the inconvenience of the wife and the undue hardship caused to the wife that has to be considered. 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 behavioral 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.”

7. Having heard the learned Counsel and having perused the Application, this Court is of the view that in the facts and circumstances of the case, ends of justice would be met if the Divorce proceedings

filed by the Respondent-husband and pending before the Court of the Civil Judge, Senior Division, Pune are transferred to the Family Court at Nashik.

8. The Application is made absolute in terms of Prayer clause 11(i) which reads thus :

“(i) This Hon’ble Court may be pleased to transfer HMP No. 349 of 2022 pending before Ld. Civil Judge Senior Division, Pune City, Pune preferred by the Opponent Husband to Ld. Family Court, Nashik.”

9. 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 proceedings as well as the proceedings for restitution of conjugal rights which are to be tried and decided on their own merits uninfluenced by the said observation(s).

(ABHAY AHUJA, J.)