

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

MISCELLANEOUS CIVIL APPLICATION NO. 27 OF 2023

Abhishek Shanatanu Shinde	.. Applicant
v/s.	
Bhagwati Abhishek Shinde	.. Respondent

...

Ms. Parul K. Vedak for the Applicant.

...

CORAM : KAMAL KHATA, J.

DATE : 4TH JULY 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 CC No. 116/DV of 2022 which is pending before the 13th Court Metropolitan Magistrate, Bhoiwada, Mumbai to Family Court, Bandra, Mumbai.

2. The Applicant's case is their marriage was solemnized on 19th February 2017 at Mumbai. Due to marital discord, the Respondent abandoned the marriage and left for matrimonial home. On 19th February 2020 the Respondent came back to the matrimonial home. On account of the continued conflict of opinion, unhappiness and discontent the Applicant suggested for a divorce by consent. Contrary to the suggestion, on 25th February 2022 the

Respondent lodged a complaint against the Applicant and his family with the N M Joshi Marg police station. Consequently, the Applicant filed divorce proceedings on 22nd April 2022. The Respondent also filed an FIR bearing No. I-0860/2022 under section (u/s) 498(A), 323 & 504, 34 of the Indian Penal Code, 1860 on 29th June 2022 and a complaint before the 13th Metropolitan Magistrate Court, Dadar, Mumbai u/s 12, 18 to 23 of the Protection of Women from Domestic Violence Act, 2005 on 17th August 2022 against the Applicant and his entire family including his brother and sister-in-law who resided with them.

3. The learned counsel for the Applicant submitted that to avoid contradictory findings on the same set of facts, to save judicial time, to avoid hardship to the parties and to avoid repetition of proceedings, all proceedings ought to be clubbed. She submitted that the family Court has a wide jurisdiction and can entertain application for reliefs u/s 18 to 22 of the Protection of Women from Domestic Violence Act, 2005 ('DV Act') as well as the reliefs sought before the Magistrate. The purpose of Section 26 of the DV Act is to ensure that any relief available under sections 18, 19, 20, 21 and 22 can be sought in any legal proceeding, before a civil Court, family Court, or a criminal Court. It is submitted that the two enactments provide for overriding remedies and reliefs. It

is further submitted that the Family Court is competent to exercise all the jurisdiction under such law and exercises the powers of a civil Court by virtue of section 7 of the Family Court Act. She accordingly submitted that the Application be allowed.

4. None appeared for the Respondent though served.

5. I have examined the prayers sought by the Respondent in the DV application which are as particularly for maintenance, damages for domestic violence, return of streedhan, injunction from further domestic violence, interim maintenance, and alternate residential accommodation which are covered under sections 18 and 22 of the DV Act. On the other hand the Applicant has sought divorce in the Family Court.

6. In the case of ***Nandkishor Pralhad Vyawahare vs. Sau. Mangala W/o. Pratap Bansar***¹, the Full Bench of this Court observed as under:

“30. Under section 12(1) of the Act, an application may be made to the Magistrate, who could be a Judicial Magistrate of the first class or as the case may be, the Metropolitan Magistrate in Mumbai metropolitan region, as defined under section 2(i), for seeking various reliefs as provided under sections 18, 19, 20, 21 and 22. These reliefs, we cannot ignore, are for redressing breach of civil rights and have a civil flavour, not known to criminal law. Besides, it is not the Judicial Magistrate First Class or the Metropolitan Magistrate, as the case may be, who alone is competent to decide an application under section 12(1). Even a Civil Court or a Family Court or any other Criminal Court conducting any legal proceeding which has the power under section 26 to do so. This

1 [2018] 3 Mah.L.J. 913

would mean, just to give example, it is possible to obtain these reliefs even in a petition filed for divorce between the same parties under the provisions of Hindu Marriage Act, 1955. This should leave no doubt in our mind that the rights created and remedies provided for breaches thereof in the DV Act, have been viewed by the Parliament as basically of civil nature and, therefore, by specific provisions, authority has been conferred even upon the civil Courts, in addition to criminal Courts, under section 26 of the Act, to deal with an application filed for seeking various remedies provided under sections 18 to 22 of the DV Act.

31. The provision made for designating the Court of Judicial Magistrate or the Metropolitan Magistrate as the Court where application under section 12 (1) of the DV Act can be made, appears to have been done only with a view to provide teeth to the powers of the Court. After all, a Court of Judicial Magistrate, First Class with a jurisdictional sway over the police stations, would be in a better position to lend help to the aggrieved persons in executing the orders passed by it. But, in order to give more option to and widen the choice of the forum of the aggrieved person, it is laid down in section 26 that the reliefs under the D V act could also be sought in other proceedings before other Court- civil or criminal, affecting the aggrieved person and the respondent.

32. Making of criminal and civil Court simultaneously as appropriate for a to obtain the reliefs provided under the DV Act is a certain pointer to the fact that the character of the proceeding is not dependent upon the nature of the tribunal which is invested with the authority to grant relief, but upon the nature of the right violated and the kind of relief that may be had. We have already seen that rights created and remedies provided for in the DV Act are basically of civil nature.

33. At the same time, we can also not ignore some procedural and penal provisions in the DV Act and Rules, 2006. to which we will shortly refer. These provisions also give rise to a question - Would these provisions determine the character of the proceedings or make up together and effective tool for the aggrieved person to get the fruits of the remedies provided under D V Act? This question would also have to be answered by us while we give our consideration to these procedural and penal provisions.

34. Section 28 of the DV Act, a procedural provision lays down that, except for the savings made in the Act and subject to power of the Court to lay down its own procedure, all proceedings under the Act are governed by the provisions of the Criminal Procedure Code. A separate part in Chapter V contains some penal provisions. Sections 31 and 33 create two distinct offences. Section 31 prescribes that any breach of protection order or interim protection, order by the respondent is an offence under the DV Act and is punishable with imprisonment of either description for a term which may extend to one year or fine up to ₹ 25,000/- or with both. This offence has been made cognizable and bailable under Section 32. Section 33 prescribes one more offence and it provides that any failure or refusal to discharge duty as directed by the magistrate in the protection order, without any sufficient cause on the part of the protection officer would be an offence punishable with imprisonment of either description for a term which may extend to one year or with fine of amount up to ₹20,000/- or with both. However, cognizance of the offence under section 33 can be taken only upon a complaint filed with the previous sanction of the State Government or its duly authorized officer. Rule 6(5) of the Rules, 2006 framed by the Central Government in exercise of its rule making power under section 37 of the DV Act lays down that applications under section 12 shall be dealt with and the orders enforced in the same manner as prescribed under section 125 of the Criminal Procedure Code.

35. Applicability of provisions of the Criminal Procedure Code and providing of criminal consequences for breaches are only indicative of the intention of the Parliament to make various civil remedies available under the DV Act more effective and meaningful. Parliament thought in its wisdom that mere giving of remedies of civil nature or an order of injunction or prohibition for that matter, may not be sufficient to enable the aggrieved person realise the benefits of civil remedies. It were the speed and fear of the criminal procedure generally and the penal consequences visiting the respondent for some of his indiscretions would what really make a disobedient respondent behave. So,. As an effective tool in the hands of the Court and the aggrieved person, the procedure to be followed generally is criminal and breach of protection order and directions issued in such order constitute two separate and distinct offences. Obviously, they have no bearing upon and don not determine the basic character of the proceeding initiated under section 12 (1) of the Act, which is by and large of the civil nature. Making breach of the protection order or failure to perform by the protection officer duty in terms of the direction given by the Magistrate in the protection order are only instances of efficacy and inherent punch of the

remedy provided under section 18 of the Act, which is at its core civil nature. These provisions at best, are effective instruments by which to make available speedily the remedies under the Act to the aggrieved person and enable her to enjoy the fruits of the remedies.

36. This is also, as we find, in keeping with the vision of Parliament which sees domestic violence as a human rights issue and a serious impediment to development. Unless a wide array of remedies is provided, and it is possible only in civil law and not in criminal law and the remedies are also made speedy and effective, which is possible by infusing them with criminality, the issues of human rights and development cannot be addressed properly. This is what seems to be the overall scheme and theme of the DV Act."

7. I am in agreement with the consistent view of various single Judges of this Court who have held that proceedings under the DV Act can be transferred to the Family Court. Moreover, considering the commonality of the reliefs and the evidence that would be led therein, it would be profitable for both parties as well as the judiciary if the Family Court tries the same. In my view, it would not only reduce the burden and save judicial time but both parties would save on legal costs, time and energy pursuing remedies in different courts. Further, there is no prejudice that would be caused to the Respondent if the both proceedings are tried at the Family Court

8. In my view, whilst the DV Act is for the convenience of the women, it is not a legal tool to harass the men and cannot be used for harassment and to put them in a dominating position to gain

unlawful leverage for the reliefs and damages sought. I have observed if not more an equal amount of misuse of the DV Act. In view of the above, I allow the transfer Application as follows:

- i. Transfer CC No. 116/DV of 2022 under provisions of the Protection of Women from Domestic Violence Act, 2005 before the 13th Court of Metropolitan Magistrate, Bhoiwada, Mumbai to the Bandra Family Court, at Bandra, Mumbai where Divorce proceedings are initiated by the Applicant and pending transfer the proceedings before the 13th Metropolitan Magistrate, Bhoiwada Mumbai be stayed;
 - ii. The Registry shall forward a copy of this order to the 13th Metropolitan Magistrate, Bhoiwada Mumbai with instructions to forthwith transmit all the records of CC No. 116/DV of 2022 between the Respondent and Applicant to the Family Court, Bandra Mumbai preferably within 4 weeks from the receipt of this order.
 - iii. The Family Court, Bandra Mumbai shall on receipt of the records of CC No. 116/DV of 2022, fix a date preferably within 3 weeks and issue notice to the parties for proceeding with the matter.
9. All concerned to act on the authenticated copy of this order.

(KAMAL KHATA, J.)