

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

MISCELLANEOUS CIVIL APPLICATION NO. 36 OF 2023

Mrs. Sunita Amit Adakhe. ... Applicant
v/s.
Mr. Amit Devidas Adakhe. ... Respondent

...
Mr. Jyotiram S.Yadav, for the Applicant.

...

CORAM : KAMAL KHATA, J.

DATED : 18TH 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 Marriage Petition (M.P.) No. 72 of 2022, which is pending before the 3rd Civil Judge Senior Division, Akola Court, District: Akola to Civil Judge Senior Division, Kalyan Court, District: Thane.

2. The Applicant's case is that her marriage was solemnized on 17th May, 2004 at Bahirkhed, Dist. Akola. Out of a wedlock, the applicant has two sons aged 17 years and 15 years old. Due to matrimonial differences, the applicant was evicted from the matrimonial home forcibly in and around 2015. The applicant is therefore residing with her parents at Ambernath.

3. The learned Counsel for the applicant submits that the applicant has only completed her schooling and is a home-maker. The parents are aged and suffering from age related issues. Besides, the applicant has no relatives in Akola and is not in a position to take a companion to accompany the applicant each time when she has to attend the court. It is submitted that the applicant needs to be accompanied with a male member as she apprehends physical abuse by the respondents. It is further submitted that the distance between Ambernath and Akola is 577 kms. and would take 11 to 12 hours for a single journey making it imminent to stay overnight. It is submitted that she has no independent source of income and has not even been paid maintenance till date. It is therefore submitted that the application be made absolute.

4. This Court on 3rd March, 2023 issued notice to the respondent. Office remark dated 15th July, 2023 indicates that the respondent is duly served. Despite service, the respondent has failed to appear either personally or through advocate.

5. 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* is 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.

6. In the light of the law laid down in the aforecited decisions, the pleadings and materials on record and the totality of the facts and circumstances of this case, particularly that not only will the Applicant have to suffer undue hardship herself but also expense to travel with some companion. Given that she has to fend not only for herself but also for her two children, I am inclined to exercise the discretionary powers of this Court under Section 24 of the Code of Civil Procedure and allow the application for transfer.

7. In view of the above I allow the transfer Application as follows:

- i. The application is allowed in terms of prayer clause (b).
- ii. The proceedings and application made in M.P. No.72/2022 pending before the 3rd Civil Judge Senior Division, at Akola Court, Dist. Akola be stayed pending transfer; and be transferred to the Civil Judge Senior Division, Kalyan Court, Dist. Thane.
- iii. The Registry shall forward a copy of this order to the Civil Judge Senior Division, Akola Court, District: Akola with

instructions to forthwith transmit all the records of M.P No. 72/2022 between the Respondent and Applicant to the Civil Judge Senior Division, Kalyan Court, District: Thane, preferably within 4 weeks from the receipt of this order.

iv. The Civil Judge Senior Division, Kalyan Court, District: Thane shall on receipt of the records of M.P. No. 72/2022, fix a date preferably within 3 weeks and issue notice to the parties for proceeding with the matter.

8. All concerned to act on the authenticated copy of this order.

(KAMAL KHATA, J.)