

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

MISCELLANEOUS CIVIL APPLICATION NO. 68 OF 2023

Vijaya Sanjay Shinde	... Applicant
v/s.	
Sanjay Ramchandra Shinde	... Respondent

...

Mr. C. K. Bhangoji for the Applicant.

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CORAM : KAMAL KHATA, J.

DATED : 18TH AUGUST 2023.

P.C. :

1. Learned counsel for the applicant seeks leave to amend the prayer clauses of the application. Permission granted. Amendment to be carried out forthwith.
2. This Miscellaneous Civil Application is filed by the Applicant wife under section 24 of the Civil Procedure Code 1908, for transfer of Hindu Marriage Petition no.742 of 2023 filed by the respondent-husband from Civil Judge, Senior Division, Belapur, Dist. Thane to 2nd Joint Civil Judge Senior Division and Addl. C.J.M. Vaduj Dist. Satara .
3. The Applicant's case is that the marriage took place on **18th May 2013** at Vaduj, District-Satara. After the marriage took place, the couple were residing at Nerul, Navi Mumbai. After retirement, they resided at Dombivali, District-Thane in or around 2016. They

have a son out of wedlock born on **24th September 2018**. Learned counsel for the applicant submits that the respondent was having an illicit relationship. On account of said relationship, the respondent left the applicant and went to reside at her parental home on 1st May, 2021. The respondent then filed an application for divorce bearing H.M.P. No. 742 of 2023 on 14th June, 2022. On the other hand the applicant filed Marriage Petition No. 232 of 2022 for restitution of conjugal rights before the 2nd Civil Judge, Senior Division and Addl. J.C.M. Vaduj, District-Satara.

4. Learned counsel for the applicant submits that the distance between **Vaduj, Satara to Thane** is around 350 kms., which would take 7 to 8 hours for a single journey and the expense of around Rs.7,500/-. The applicant also has to take care of her minor child as there is no one to take care of him. Learned counsel for the applicant further submitted that the applicant has neither given any maintenance nor offered any travel charges to her. Learned counsel also states that she has no source of income and depends upon her parents for her livelihood. He accordingly submits that the application be made absolute.

5. The Respondent has failed to appear though served.

6. 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*¹ and *N.C.V. Aishwarya v. A. S. Saravana Karthik Sha*² 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.

7. In my view, considering the distance to travel, the expense that would be incurred and more particularly the child who will have to be kept with grandparents whilst she is required to stay overnight on each of the court dates would make it inconvenient for her, I am inclined to allow the transfer application.

8. In the facts and circumstances narrated hereinabove, I pass the following order;

- (i) Application is allowed in terms of prayer clause (a).
- (ii) The proceedings and application made in H.M.P. No.742 of **2023** pending before Civil Judge, Senior Division, Belapur, District: Thane be stayed pending transfer; and be transferred to 2nd Joint Civil Judge Senior Division and Addl. C.J.M. Vaduj.
- (iii) The transfer may be effected within a period of four weeks and upon receipt of the papers and proceedings the 2nd Joint Civil Judge Senior Division and Addl. C.J.M. **Vaduj** shall give notice to the parties, preferably within three weeks, to proceed with their respective matters.

1 (2001) 10 SCC 41 : AIR 2002 SC 396

2 2022 SCC OnLine 1199

(iv) 2nd Joint Civil Judge Senior Division and Addl. C.J.M.

Vaduj may grant video conferencing facility to the respondent if he applied for and if his physical presence is not absolutely necessary.

(v) All concerned to act on the authenticated copy of this order.

(KAMAL KHATA, J.)

Note: This order is modified by an order dated 21st December 2023. Corrections are shown only in bold.