

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

MISC. CIVIL APPLICATION NO. 727 OF 2022

(Sau. Dipanshu w/o Abhishek Agarwal Vs. Shri Abhishek s/o Vinod Agarwal)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri S.I. Ghatte, Advocate for the applicant.

Shri Dhiraj Oza, Advocate for the non-applicant.

CORAM : URMILA JOSHI-PHALKE, J.

RESERVED ON : JANUARY 17, 2023

PRONOUNCED ON : FEBRUARY 13, 2023

Heard.

2. The applicant invoking the jurisdiction of this Court under Section 24 of the Code of Civil Procedure, 1908.

3. The necessary facts in brief are as follows :

A] The applicant is the legally wedded wife of the non-applicant and their marriage was solemnized on 02/07/2021 as per the customs. After marriage, she resumed cohabitation however she was not treated well, and therefore, she constrained to leave matrimonial house. It is further her contention that the non-applicant was serving in Merchant Navy. He always required to go abroad for a period of 3 to 6 months. In such circumstances, she was constrained to live with the family of the non-applicant. The family members of the non-applicant forced her to handover her ornaments and she was ill-treated for the same, therefore, she constrained to leave the matrimonial house.

4. She further alleged that though she was not well she was forced to carry out the household work which affected her health which is also one of the reason to leave the matrimonial house. She further alleged that the non-applicant was never supporting and never understood her feelings. She tried to inform him about the harassment at the hands of his family members but whenever she used to complain he used to threatened her that she has to face the dire consequences if she complains about his parents. The non-applicant and his parents used to got angry whenever she request them to send her at her parents house. On festivals, when she comes to her parents house, non-applicant and his parents informed her that she should not return back. In the year 2021, she came to her parents house for Rakhi festival but the non-applicant and his parents told her not to come back. She as well as her family members tried to convince them but they were not ready to hear and therefore, she constrained to stay at her parents house. Thereafter non-applicant has issued her notice. She replied the said notice. She attempted to save her marriage but the non-applicant was not willing to continue with the said relationship and he filed the petition for divorce in the court of Civil Judge, Senior Division, Wasai. She had also filed petition under the provisions of Protection of Women from Domestic Violence Act, 2005 which is pending before the Judicial Magistrate First Class, Amravati.

5. In response to the notice, the non-applicant filed his reply and denied the allegations of the applicant. As per contention of the non-applicant that the applicant has made false and baseless allegations. She had filed the application under the provisions of Protection of Women from Domestic Violence Act, 2005 only to give counter blast to the petition filed by him. He further contended that the applicant is doing job in Mumbai till date and she used to reside and visit in Mumbai for job purposes so no difficulty arise to the applicant to attend the Court for hearing purposes. There are four persons in her family who can escort her to attend the proceedings. It is further contended that the applicant is earning handsome income and she is doing job in Mumbai. The proof regarding the same has been already attached by him. It is further submitted by the non-applicant that the applicant is earning handsome income and therefore, she can incur the expenses by visiting Mumbai for hearing purpose. Hence, the application deserves to be rejected.

6. Heard Shri Ghate, learned Counsel for the applicant. He submitted that initially the applicant was doing the job at Mumbai but now she is residing along with her parents though she is taking efforts to get the job however, she could not get the job and therefore she is residing at Amravati. The distance between Amravati to Wasai is more than 700 kilometers. Therefore, Wasai is the most inconvenient place for her. There is nobody in her family to escort her to attend the proceeding at Wasai.

7. In support of his contention he placed reliance on ***Sangamitra w/o Ramakant Royalwar, Vs. Ramakant s/o Gangaram Royalwar 2009 (1) Mh.L.J. 303*** wherein this court has considered the aspect regarding the powers of this Court. In view of Section 24 and the Bombay High Court Appellate Side Rules, 1960 Chapter XXXI Rule 1 and held that in view of Rule 1 of Chapter XXXI of the Bombay High Court Appellate Side Rules the Bench has got jurisdiction and competence to take cognizance thereof. It is further held that the applications arise in judicial district mentioned in Rule 1 of Chapter XXXI of the Appellate Side Rules and to order the transfer. Accordingly, all the 3 Miscellaneous Civil Applications are allowed.

8. He further relied upon ***Irene Blanch Khera and anr. Vs. Glenn John Vijay 2018 SCC OnLine Bom 1545*** wherein the issue before the Court was whether the High Court of Bombay, Bench at Goa by virtue of this provision has jurisdiction to transfer the petition pending in Mumbai. This Court at Goa Bench held that High Court of Bombay being a Common High Court for the State of Maharashtra and the State of Goa, the same jurisdiction including the jurisdiction under the Letter Patent is exercisable by the High Court of Bombay sitting at Panji, which is exercisable by the High Court of Bombay at its Principal Seat and its Benches at Nagpur and Aurangabad, therefore, if the Principal Seat of the High Court at Bombay can transfer the proceedings pending in the

judicial districts in exclusive jurisdiction of its benches at Aurangabad or Nagpur, then it follows that the Principal Seat of High Court at Bombay can also transfer the proceedings which are lying within the exclusive jurisdiction of its Seat at Goa. As both the Courts i.e the Court in which proceeding are pending and the Court to which the proceedings are to be transferred are subordinate to the common High Court. This position is also cleared by the decision of this Court at Nagpur Bench wherein also the same issue was raised while deciding the said question it was held that in view of Rule 1 of Chapter XXXI of the Bombay High Court Appellate Side Rules, 1960, the Bench of the Bombay High Court at Nagpur has the jurisdiction and competence to take cognizance of such applications. Hence, it follows that if the Nagpur Bench is having the jurisdiction to transfer the proceedings which are lying exclusively within the jurisdiction of another Bench, may be at Aurangabad or Principal Seat at Bombay, then the Principal Seat Bombay is required to be held as having the jurisdiction to transfer the proceedings pending exclusively within the jurisdiction of its Seat at Goa.

9. He further placed reliance on ***N.C.V Aishwarya Vs. A.S. Saravana Karthik Sha AIR 2022 SC 4318*** wherein Hon'ble Apex Court held that :

“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 life. 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."

10. Per contra, learned Advocate Oza, for the non-applicant submitted that applicant is not illiterate lady. She is working as an Executive in the multinational company. After filing of this application also she is serving as a Manager in multinational company, therefore, the ground raised by her that there is nobody to escort her to attend the proceeding is not available to her. The another ground raised by her is that Wasai is not convenient place for her. But while considering the transfer application, mere convenience of the parties is not the relevant factor but whether transfer of the matter will cause hardship to the other party is to be seen. Except by stating that she is residing at Amravati no other particulars are given by her to show that she is not able to come to Wasai to attend the Court on particular date. The ground raised by her

regarding the cost of litigation is also not available as she is serving in Mumbai and drawing handsome salary. Thus, the grounds raised by her are not available to the applicant for transfer of the matrimonial proceeding. Hence, application deserves to be rejected.

11. Heard rival contentions of the parties. Perused the application and reply along with the relevant documents.

12. Before entering into the merits of the application, it is necessary to refer the provision i.e. Section 24 of the Code of Civil Procedure. Section 24 of the Code of Civil Procedure confers a discretionary power upon the High Court as well as to the District Court to transfer the proceedings pending in one sub-ordinate Court to another sub-ordinate Court. It has to be exercised keeping in view the facts and circumstances of each case while deciding the application the Court has to balance the convenience by taking into consideration relevant facts and circumstances and to see that the greater hardship is not caused by transfer of proceeding. Mere convenience of the parties or any of them may not be enough for exercise of the power but it must also be shown that the forum chosen by the other side will result in denial of justice. Thus, the power is to be exercised in the interest of justice. The short question that arises for consideration is whether the perceived hardship to the applicant in prosecuting her case at the place where the respondent instituted a case for divorce can be defeated by allegations

by the respondent on the ground that she is residing at Amravati and the petition filed at Wasai is inconvenient place for her.

13. Section 22 to 25 of Code of Civil Procedure deals with transfer of suits. Section 24 confers general power of transfer and withdrawal. The power is exercisable either on the application of the parties or suo motu by this Court or the District Court. Under sub-section (2) of Section 24 of Code of Civil Procedure this Court or the District Court are empowered to transfer or withdraw the suit subject to any special directions in the case of an order of transfer. Apart from the provision in the Code of Civil Procedure, Section 21-A of Hindu Marriage Act, 1955 enables the High Court to transfer a petition for judicial separation or for decree of divorce in the manner provided under Section 21-A(2). Section 21-A of Hindu Marriage Act, 1955 reads as follows :

“21-A. Power to transfer petitions in certain cases -

(1) Where -

(a) a petition under this Act has been presented to a district Court having jurisdiction by a party to a marriage praying for a decree for judicial separation under Section 10 or for a decree of divorce under Section 13, and

(b) another petition under this Act has been presented thereafter by the other party to the marriage praying for a decree for judicial separation under Section 10 or for a decree of divorce

under Section 13 on any ground, whether in the same district Court or in a different district Court, in the same State or in a different State.

the petitions shall be dealt with as specified in sub-Section (2).

(2) In a case where sub-section (1) applies, -

(a) if the petitions are presented to the same district Court, both the petitions shall be tried and heard together by that district Court;

(b) if the petitions are presented to different district Courts, the petition presented later shall be transferred to the district Court in which the earlier petition was presented and both the petitions shall be heard and disposed of together by the district Court in which the earlier petition was presented.

3. XXXXX”

14. A plain reading of sub-Section (2) of Section 21-A makes it clear that the power of transferring a petition under Section 10 or 13 of the Act is governed by Section 21-A. As per this provision, if two petitions are presented to different District Courts, the petition presented later shall be transferred to the District Court in which the earlier petition was presented and both petitions shall be heard and disposed of together by the District Court in which earlier petition was presented. If the husband has filed a petition for divorce and wife also filed the petition for restitution of conjugal rights, the

transfer of the case either by the husband or wife is permissible subject to condition that the later case by either spouse will be transferred to the earlier case by either spouse.

15. Thus, whenever Courts are called upon to consider a plea of transfer in matrimonial matters, Courts have to take into consideration the economic soundness of either of the parties, the social strata of the spouses and the behavioral pattern of their standard of life antecedent to marriage and subsequent thereof after the snap of the knot which resulted in marriage.

16. The Hon'ble Apex Court recently in the case of N.C.V. Aishwarya (*supra*) held that 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 the 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 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 life. Generally, it is the wife's convenience which must be looked at while considering transfer. Hon'ble Apex Court in the case of ***Anindita Das Vs. Srijit Das 2006 (9) SCC 197*** held that this Court is now required to consider each petition on its

merit. In this case, the ground taken by the wife is that she has a small child and that there is nobody to keep her child. The child is six years old and there are grand parents available to look after the child. The respondent is willing to pay all expenses for travel and also held that she can always apply for exemption and her application will undoubtedly be considered on its merit. Hence no ground for transfer has been made out. In another judgment ***Subramaniam Swamy Vs. Ramakrishna Hegde 1990 (1) SCC 4*** wherein it is held that mere convenience of the parties is not criteria but there must be sufficient cause shown in the transfer petition that the trial chosen forum will result in denial of justice to the parties.

17. In view of the ratio laid down by the Hon'ble Apex Court in various judgments, each case is to be decided on its own facts and circumstances. In the present case, the applicant has come out with the case that Amravati to Wasai distance is about 700 kilometers. The journey by bus requires at least 15 to 16 hours and by train it took more than 12 to 13 hours and applicant is residing with her old aged father and mother. There is nobody to accompany her to escort her to attend the proceeding. Another ground raised by her that she had instituted proceeding under the provisions of the Protection of Women from Domestic Violence Act, 2005 at Amravati. She has no independent source of income and she is dependent upon her parents and therefore she is unable to bear the cost. Said grounds are denied by the

non-applicant by mentioning that applicant is residing along with her parents as well as her four brothers. Her parents and brothers are dealing with the business, and therefore, her contention that there is nobody to accompany her to attend the proceeding is baseless. He further submitted that applicant is not illiterate lady and working as a Manager in multinational company. He submitted that thus applicant is in habit of and used to travel alone for her work purpose. To substantiate his contention he placed reliance on the communication made by the applicant by furnishing her Resume to the various companies wherein she has shared that she is having experience of working as a Manager in Mumbai. At present also she is doing the job at Mumbai. He submitted on record her WhatsApp communication dated 11/06/2022 which shows that she is working in Mumbai. He further placed reliance on the communication to show that her brothers are also businessman which sufficiently shows that she is having source of income and she is not dependent upon anybody.

18. Thus, the contention of the non-applicant is that no grounds are available to the applicant for seeking the transfer from Wasai to Amravati.

19. Now it is required to be considered whether the applicant/wife has made out any ground for transfer. Admittedly, she is not an illiterate lady. Her own pleading shows that initially she was doing job. As per her contention she left the job in January, 2022 and since then

she is jobless, however the communication made by her in April, 2022 shows that she applied for the job wherein she has mentioned that she worked as a Senior Audit Analyst from March, 2020 to March, 2022 at Pune. Thereafter she is serving as a Manager in Mumbai since April, 2022. Her further communication dated 11/06/2022 shows that she is serving in Mumbai as a Manager. Thus, the non-applicant has *prima facie* established that the applicant is used to travel alone for her job purpose and she is not in need of any companion to travel.

20. Considering the applicant is not illiterate lady and she is serving as a Manager, her contention that she is unable to travel alone is not sustainable. Except for stating that her parents are old aged and there is nobody to accompany her is not acceptable as her pleading shows that she returned to her parents house along with her brother, therefore, it shows that her brothers are available if she requires the company to attend the proceedings. Thus, the ground raised by her that she is not able to come to Wasai to attend the Court proceeding is not sustainable. Moreover, if she requires the exemption on any date, she can apply for exemption and her application will be considered on its merits. Even she can attend the proceedings through Video conferencing also. Thus, the grounds which are raised by the applicant are not sufficient to transfer the proceeding in the light that she is already doing the job at Mumbai.

21. In my opinion, the grounds raised by the applicant is only her convenience, which cannot be a sole ground to transfer the proceeding but there must be sufficient cause which is to be shown in the transfer petition. Moreover, the grounds raised by her that she cannot travel alone to attend the proceeding as her parents are old aged especially in this era when the women are traveling up to Space is unacceptable. Present applicant admittedly is not an illiterate lady. The ground that lady is unable to travel all alone can be considered in the cases of the illiterate ladies who are unaware about the geographical situation of the another city wherein their matrimonial house is situated. Thus, taking into consideration the fact that applicant is a literate lady and doing job of a Manager in a metropolitan city, I do not find any acceptable ground to transfer the petition from competent Court Wasai to Amravati. Hence application deserves to be rejected. Accordingly, the application is rejected.

(URMILA JOSHI-PHALKE, J.)

**Divya*