

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISCELLANEOUS CIVIL APPLICATION NO. 44 OF 2024

Mrs. Savita Sagar Mashale

.Applicant

Versus

Mr. Sagar Siddharam Mashale

.Respondent

Mr. Shailesh Kharat, Advocate, for the Applicant

Ms. Nidhi Chauhan i/b. Mr. Vishwanath Patil, Advocate, for the
Respondent

CORAM : S. M. MODAK, J.

DATE : 21.11.2024

P. C.

1. Heard Mr. Kharat, learned Counsel for the Applicant-wife and Ms. Chauhan, learned Counsel for the Respondent – husband.
2. The aforesaid Application is filed seeking transfer of the Marriage Petition i. e. for restitution filed by the Respondent – husband before the Matrimonial Court, Akkalkot, District – Solapur. The Applicant – wife wants transfer of that Petition from the C. J. S. D. Court, Solapur to the Family Court, Sangli. There are three reasons. They are as follows :-

(i) Firstly, there is a proceeding initiated by her invoking the provisions of the Protection of Women from Domestic Violence Act, 2005 which is pending before the learned JMFC, Sangli.

(ii) Secondly, Akkalkot is situated at far away distance from Sangli. It takes at least two hours to travel to Sangli from Akkalkot and she cannot travel alone. Her father is suffering from Cancer. The Certificate of Tata Hospital is annexed herewith.

(iii) Thirdly, otherwise also Respondent - husband is also facing prosecution for the offence punishable under Section 498A of the Indian Penal Code, 1860.

3. The affidavit-in-reply filed by the Respondent - husband is taken on record. The prayer is opposed on the following grounds :-

(i) Firstly, there is no recent Medical Certificate of the father filed by the Applicant – wife. The Certificate which is annexed is of the year 2021 and in fact, the Marriage Petition was filed in the year 2022.

(ii) Secondly, the Respondent - husband apprehends danger because family of the wife is having clout in that area. It is for the

reason that the father and brother of the Applicant – wife are in police department. Earlier, he was threatened when both were co-habiting together. It is denied on behalf of the Applicant – wife. Learned Counsel for the Applicant – wife states that father of the Applicant – wife has already retired and her brother even though in the police department, presently, he is posted in Mumbai.

(iii) Thirdly, learned Counsel for the Respondent strongly opposes the Application and relied on the observations made in the case of *Preeti Sharma vs. Manjit Sharma*, reported in (2005) 11 SCC 535 and in *Kulwinder Kaur alias Kulwinder Gurcharan Singh vs. Kandi Friends Education Trust and others*, reported in (2008) 3 SCC 659.

4. Mr. Kharat, learned Counsel for the Respondent also relied on the observations made in two decisions in the case of *Vijaya Sachin Anurkar (Gurav) vs. Sachin Vasantrao Anurkar (Gurav)*, reported in 2012(5) Mh.L.J. 721 and in *Shreya w/o Prashant Agale vs. Prashant s/o Prakash Agale*, reported in 2012(5) Mh.L.J. 943.

5. Even though, it may be true that the Hon'ble Supreme Court has made certain observations when there is a transfer Application filed under Section 24 of the Civil Procedure Code, 1908 in the case

of *Kulwinder Kaur alias Kulwinder Gurcharan Singh* (Supra), facts not dealing with matrimonial relationship but it was a suit. My attention is also invited to the observations from the earlier Judgment reproduced in paragraph 24 of the Judgment. Apart from the convenience, something substantial, more compelling, more more imperiling, from the point of view of public justice and its attendant environment is necessary in order to justify the transfer.

6. It is true that in the case of *Preeti Sharma* (Supra), request was made by the wife for transfer of the proceedings from CJSD, Muzaffar Nagar, U. P. to the District Court, Karkardooma, Shahdara, Delhi. That being inter state transfer, the Application was moved before the Hon'ble Supreme Court. It was rejected on the ground that there is no substantial ground for transfer. These are the observations pertaining to the facts of that case.

7. If the observations in the case of *Vijaya Sachin Anurkar (Gurav)* (Supra) and *Shreya w/o Prashant Agale* (Supra) are perused, it is clear that the Court has considered convenience of the wife. The Court has to see what are the reasons for transfer. Even though there is an allegation of clout and one incident of threatening, admittedly,

the Affidavit does not mentions about the same. The Respondent – husband is appearing before the learned JMFC, Sangli in two proceedings which are pending. It may be true that the restitution Petition has now come up for the evidence meaning thereby earlier the Applicant – wife must have attended the Akkalkot Court. The aforesaid factor does not entitle the Applicant – wife to seek transfer of the Marriage Petition. Whatever allegations are made, they are not supported by the documents and the facts are otherwise. I am inclined to accept the prayer for transfer. No exceptional case is made for refusing transfer. Hence, I proceed to pass the following order.

O R D E R

- (i) The Application is allowed;
- (ii) The Application No. 44 of 2022 is transferred from the CJSD, Court, Solapur to the Family Court, Sangli, District – Sangli;
- (iii) Both the parties are directed to appear before the Family Court, Sangli on **09.12.2024** at **11.00 a. m.**;
- (iv) The learned Family Judge to continue with the proceeding from the earlier stage;

(v) There is no need to issue a fresh notice.

8. Accordingly, the Application stands disposed of.

(S. M. MODAK, J.)