

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISCELLANEOUS CIVIL APPLICATION NO.391 OF 2023

Sanjana Ganesham Kota .. Applicant
Versus
Ganesham Narsayya Kota .. Respondent

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- Ms. Vilasini Balasubramanian a/w. Mr. Jaydeep Mane, Advocate for Applicant.
 - Ms. Jahn timer S. Karnik, Advocate (appointed through legal aid) for Respondent.

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CORAM : MILIND N. JADHAV, J.

DATE : SEPTEMBER 18, 2024

P.C.:

- 1.** Heard Ms. Balasubramanian, learned Advocate for Applicant and Ms. Karnik, learned Advocate for Respondent.
- 2.** This Miscellaneous Civil Application is filed by Applicant – wife for transfer of Marriage Petition No.1989 of 2022 filed by Respondent – husband in Court of 2nd Joint Civil Judge Senior Division, Kalyan to Family Court, Solapur.
- 3.** Applicant – wife resides at Solapur with her family and has also filed other proceedings in Solapur. Apart from proximity of distance expressed by wife as one of the major reason of hardship, the convenience of the wife will have to be considered.
- 4.** Ms. Karnik would draw my attention to Affidavit-in-Reply dated 22.08.2024 which is appended at page No.38 of the

Miscellaneous Civil Application to contend that Respondent is a paralytic patient suffering from Parkinson disease and because of his present medical and physical condition it would be difficult and unable for him to travel from Kalyan to Solapur. She has taken me through the contents of the Affidavit-in-Reply. Ground of proximity of distance is taken by Respondent also as he would contend that the travel time and distance from Dombiwali, Kalyan to Solapur would be an issue of hardship to be considered by the Court. She would next submit that Respondent has suffered a paralytic attack on his left side of the body one and half year ago and since then he is taking treatment. That apart, she would submit that he is also in financial distress due to his medical condition as he is required to visit the hospital for treatment regularly and is infact looked after by his own son who is studying M.Sc. in Dombiwali itself. She would submit that he is a tailor by profession and due to his professional demand of sitting for long hours on a tailoring machine he has suffered the medical ailment. Therefore she would submit that the present Miscellaneous Civil Application be rejected. In support of her submissions, certain medical papers and a doctor's certificate is also referred to and relied upon. I have perused the same.

5. After hearing both the learned Advocates appearing for the respective parties and perusing the record and pleadings it is seen that there is no doubt that Respondent has stated about his medical ailment

and it is duly supported by the Affidavit-in-Reply and Exhibits therein and some degree of difficulty that would be experienced and encountered by him would undoubtedly be there. However, ethos of the provisions of Section 24 of the Code of Civil Procedure, 1908 (for short ‘CPC’) require this Court to consider the Application for transfer and more specifically so given the prevailing socio-economic paradigm in the Indian Society as held by Supreme Court in the case of **N.C.V. Aishwarya Vs. A. S. Saravana Karthik Sha**¹, it would be wife’s convenience which must be looked at while considering such a transfer. The difficulty expressed by the Applicant in view of proximity of distance that she would have to traverse from Solapur to Kalyan and the fact that she would require the accompaniment of her elder / parent on all such visits, apart from the costs involved clearly outweigh the submissions made by Respondent. I say this because, Respondent’s grievance can be redressed by passing appropriate direction permitting Respondent to appear through Video Conferencing before Family Court, Solapur if so required. It is seen that Applicant is dependent upon her family members and parents and is also doing work of a house help and maid in Solapur. Her hardship is therefore clearly evident and proven.

6. In view of my above observations and findings, Miscellaneous Civil Application therefore stands allowed in terms of

¹ AIR 2022 SC 4318.

prayer clause (A) which reads thus, however with a caveat:-

“A) That this Hon'ble Court be pleased to transfer the proceedings Marriage Petition bearing Marriage Petition No.1989 of 2022 presently pending on the file of Ld. 2nd. JT. Civil Judge Senior Division, Kalyan Court to The Learned Family Court Solapur at Solapur;”

7. The Respondent is permitted to appear before Family Court, Solapur on Video Conference / V. C. Learned Family Court shall permit and allow the Respondent to appear on V.C. in the transferred Marriage Petition which shall be re-registered by the Family Court, Solapur.

8. Both the concerned Courts shall act on a server copy of this order and shall not insist on any formal application either for transfer, re-registration or for permitting the Respondent to appear through Video Conferencing on the scheduled dates of hearing.

9. In the present case, Ms. Karnik, learned Advocate is appointed through the Legal Aid Services Committee, High Court, Mumbai. Her professional fee quantified as per the Rules be paid to her by the High Court Legal Aid Services Committee, Mumbai, within a period of four weeks positively upon a server copy of this order presented by her to the Committee alongwith her Application.

10. With the above directions, Miscellaneous Civil Application is allowed and disposed.