

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO. 7 OF 2024

Swati Manish Agrawal

.. Applicant

Versus

Manish Balkrishna Agrawal

.. Respondent

.....

- Mr. Rajesh H. Mishra for Applicant
- Mr. Mayur Salunke for Respondent through VC

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CORAM : MILIND N. JADHAV, J.

DATE : SEPTEMBER 27, 2024

P. C.:

1. Heard Mr. Mishra, learned Advocate for Applicant and Mr. Salunke, learned Advocate for Respondent.

2. Present Application is filed in December 2023 and has been pending since then. Several orders have been passed in the present Misc. Civil Application (MCA). Even today during the course of hearing Mr. Salunke would submit that MCA should be adjourned to enable the Respondent to remain present. It is the duty of the Respondent and / or his Advocate to remain present when the matter is listed for hearing and called out. Mr. Salunke appears through VC.

3. Present MCA seeks transfer of the Marriage Petition filed by Respondent - husband in the Family Court at Pune to the Family Court at Bandra, Mumbai where the Applicant is residing. Applicant is residing in Kandivali, Mumbai. She is required to take care and

provide support to her minor son who is 10 year old. Apart from proximity of distance between the two destinations, it is seen that Applicant is solely dependent on her widowed mother and therefore having financial constraints. Applicant has filed D.V. Act proceedings and Complaint under Section 498-A of IPC in the Court at Mumbai. Considering the proximity of distance and the hardship which is clearly evident to the Applicant where she is required to take care and provide support to her 10 year old son, the present MCA deserves to be allowed. Considering the imprimatur of the Supreme Court in the case of **N.C.V. Aishwarya Vs. A.S. Saravana Karthik Sha**¹, I see no impediment in allowing the present MCA.

4. *Per contra*, Mr. Salunke would submit that present MCA is filed four years after the Marriage Petition has been filed by Respondent. Mr. Salunke forgets that during the last four years, this world had seen an unprecedented crisis due to the Covid 19 pandemic during which the entire nation was in lockdown. Supreme Court has also taken cognizance of the same in its order passed in *Suo Motu Writ Petition (C) No. 3 of 2020* and companion matters and exempted limitation to that extent. In any event, even if the aforesaid reason would not have been there, there is still no impediment on the Applicant - wife to file the present MCA even after four years. The ethos of Section 24 of the

¹ AIR 2022 SC 4318

CPC has been duly explained by the Supreme Court in the decision in the case of *N.C.V. Aishwarya (supra)*. The Supreme Court has held that in matrimonial matters whenever Courts are called upon to consider the plea of transfer, it will have to take into consideration an array of factors as stated therein in order to decide the case. That apart looking into the prevailing socio-economic paradigm in the Indian society, it is the wife's convenience which must be looked at while considering such a transfer.

5. In view of the above, present MCA is allowed in terms of prayer clause (a) which reads thus:-

"(a) That transfer the Marriage Petition (divorce petition) No. 108/2020 filed by the Respondent - husband before Ld. Family Court Pune, Maharashtra pending before Ld. Family Court at Pune, Maharashtra to the Court of Ld. Principal Judge Family Court, Bandra, Mumbai."

6. Needless to state that Respondent can be permitted to appear through VC on the scheduled dates of hearing by the appropriate Court.

7. All the concerned Courts shall take cognizance of a server copy of this order and shall not insist on a certified copy of the order and act accordingly for transfer and re-registration of the proceedings as expeditiously as possible and in any event within two weeks from the date of presentation of a server copy of this order to the Courts by the Advocates for the parties.

8. MCA is allowed and disposed.

Amberkar

[MILIND N. JADHAV, J.]

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