

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISCELLANEOUS CIVIL APPLICATION NO.15 OF 2024

Rushali Rakesh More .. Applicant
Versus
Rakesh Yashwant More .. Respondent

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• Mr. Tanmay Jadhav, Advocate for Applicant.
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CORAM : MILIND N. JADHAV, J.

DATE : SEPTEMBER 19, 2024

P.C.:

1. Heard Mr. Jadhav, learned Advocate for Applicant.
Respondent and his Advocate is absent.

2. Pursuant to order dated 02.07.2024, Mediation Report has
been filed but Mediation is failed. Hence, the Miscellaneous Civil
Application is taken up for hearing.

3. Respondent is represented by Advocate who is not present.

4. Miscellaneous Civil Application is filed in October-2023. It
cannot be protracted any further. Applicant is residing in Goregaon.
She seeks transfer of Marriage Petition No.19 of 2023 filed by
Respondent – husband in the District and Session Court at Kalyan
under Section 27(3)(d) of Special Marriage Act to Family Court,
Bandra, Mumbai.

5. The Applicant has enumerated the grounds in paragraph

No.9 of the Miscellaneous Civil Application. She has filed proceedings under the Protection of Women from Domestic Violence Act, 2005 (for short '**D.V. Act**') in the Court at Borivali, Mumbai. The grounds as elucidated by the Applicant are with respect to her hardship of travel from Goregaon to Kalyan to attend the Court proceedings and more specifically requiring the accompaniment of her parents who are of old age and also suffering from medical ailments. The Applicant has no independent source of income and the grounds of hardship revolve around the Applicant undertaking the journey to the Court at Kalyan for every date of hearing. It is stated in ground (I) of the Miscellaneous Civil Application that Applicant's mother is bed-ridden and completely immobile and survives on oxygen and she is required to take care of her. Mr. Jadhav informs me today that on 16.02.2024, Applicant's mother has succumbed and passed away. Convenience rather proximity of distance has been explained by the Applicant to reach the Family Court, Bandra from her residence in Goregaon conveniently as opposed to reach the Civil Court at Kalyan which on any given date takes approximately two to three hours merely for the length of travel. The hardship of the Applicant is evident as this Court is aware of the travel experience required to be undertaken in the local trains of Mumbai especially when the trains are required to be changed and boarded from the Western Railway corridor to the Central Railway Corridor and vice-versa to reach Kalyan from Goregaon. Only a person

living in Mumbai and travelling by the local train can understand the degree of difficulty of boarding or alighting from the local train at Dadar, Goregaon and Kalyan Stations. For the journey from Goregaon to Kalyan, Applicant would be required to board the train at Goregaon, alight at Dadar, change the terminus / station through the connecting bridge, board again at Dadar and then alight at Kalyan. The same exercise would have to be repeated by her on her return journey from Kalyan to Goregaon. The degree of hardship of travel to the wife is clearly evident from the above.

6. Respondent has filed Affidavit-in-Reply dated 30.04.2024. Respondent is working in a private Company at Lower Parel. The audacity of Respondent can be seen from the averments made in paragraph No.19 of his Reply while replying to ground (C) in the Miscellaneous Civil Application. The Respondent has averred that if it is the Applicant's case that he can cause harm to her in Kalyan then he can certainly harm her in Bandra (*emphasis supplied*). Though Respondent's entire case is based merely on denials, the ethos of his Affidavit-in-Reply does not merit any countenance from this Court as it is utterly insensitive and unsympathetic to the core. In paragraph No.21, the Respondent has stated that the health of Applicant's mother will not improve if she travels to Bandra instead of Kalyan. What Respondent is forgetting is that Applicant is infact required to take care of her parents and making such averments in the Affidavit-in-Reply do

not make his case good. Next on the legal issue, Respondent has attempted to argue that jurisdiction of Court is not dependent upon the work place of the litigant and it does not matter where the Respondent is employed. According to him since parties resided last at Kalyan the jurisdiction to try and entertain the Marriage Petition should be at Kalyan. Affidavit-in-Reply of Respondent has been perused by me and I find that submissions and grounds stated by Respondent do not deserve any consideration whatsoever as they are not in consonance with the law at all. Respondent is clearly undermining the power of this Court to consider the Miscellaneous Civil Application for transfer of a matrimonial proceeding between the parties under Section 24 of the Code of Civil Procedure, 1908 (for short '**CPC**'). The grounds of hardship enumerated by the Applicant clearly outweigh the submissions made by Respondent in his Affidavit-in-Reply.

7. Considering the ethos of the provisions of Section 24 of the CPC as delineated and enumerated by the Supreme Court in case of ***N.C.V. Aishwarya Vs. A.S. Saravana Karthik Sha***¹ in paragraph Nos.9 to 11 thereof, it is wife's convenience which must be looked at while considering a transfer. For reference, paragraph Nos.9 to 11 are reproduced below:-

"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

¹ AIR 2022 SC 4318.

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. Further, when two or more proceedings are pending in different Courts between the same parties which raise common question of fact and law, and when the decisions in the cases are interdependent, it is desirable that they should be tried together by the same Judge so as to avoid multiplicity in trial of the same issues and conflict of decisions.

11. As noticed above, the Appellant is a young lady aged about 21 years, staying alone along with her aged parents. Under the above circumstances, it is difficult for her to travel all the way from Chennai to Vellore to attend the court proceedings of the case filed by the Respondent seeking annulment of marriage. Further, it is also just and proper to club all the three cases together to avoid multiplicity of the proceedings and conflict of decisions. Therefore, the High Court was not justified in rejecting transfer petition bearing TR.C.M.P.No. 473 of 2020, filed by the Appellant herein."

8. In the facts of the present case and applying the aforesaid principles in matrimonial matters where Courts are called upon to consider the plea of transfer, the Court will have to take into consideration an array of factors given the prevailing socio-economic paradigm in the Indian Society and wife's convenience will have to be considered.

9. In that view of the matter, Miscellaneous Civil Application deserves to be considered and allowed. Miscellaneous Civil Application therefore stands allowed in terms of prayer clause (b) which reads thus:-

“b. This Hon'ble Court be pleased to transfer the M.P. No.19 of 2023 filed by Respondent in the District and Session Court at Kalyan under section 27 (3) (d) under The Special Marriage Act to the Family Court at Bandra, Mumbai.”

10. With the above direction, Miscellaneous Civil Application stands allowed and disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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