

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO. 140 OF 2024

Vaishali Sarang Shikkenis @
Vaishali Mukundrao Wagh

.. Applicant

Versus

Sarang Suresh Shikkenis

.. Respondent

-
- Mr. Eknath Dhokale for Petitioner
 - Mr. Suraj J. Chaudhari for Respondent
-

CORAM : MILIND N. JADHAV, J.

DATE : AUGUST 30, 2024

P. C.:

1. Heard Mr. Dhokale, learned Advocate for Petitioner and Mr. Chaudhari, learned Advocate for Respondent.

2. In compliance of the directions contained in the order dated 28.08.2024, Respondent has filed affidavit in reply which is placed before me. It is taken on record.

3. By the present Misc. Civil Application (MCA), Applicant - wife seeks transfer of Marriage Petition pending in the Family Court, Jalgaon to the Family Court, Pune.

4. Applicant is the wife who is 45 years of age and states that she stays with her daughter in Pune. She has also filed a Petition for seeking maintenance being Crim. M.A. No. 239/2013 under Section 125 of the Code of Criminal Procedure before the Family Court, Pune

which is pending. Orders have been passed in that Application for payment of maintenance and it is seen that orders passed therein are breached by Respondent. On being asked as to what is the outstanding amount in response to the figures which are stated in paragraph No. 6 of the Application, Mr. Chaudhari would submit that he would not be in a position to answer the same. That apart there is a recovery proceeding bearing No. ER/59/2020 filed by Applicant which is pending in the Family Court, Pune in respect of the outstanding arrears required to be deposited by Respondent. I have perused the pleadings.

5. *Per contra*, Mr. Chaudhari would persuade me to consider the affidavit in reply filed by Respondent dated 30.08.2024 and the verbose but clearly unnecessary documents annexed thereto pertaining to the proceedings filed before the Family Court, Pune, Family Court, Jalgaon and roznama. He would submit that parents of Applicant and her brother resides in Jalgaon and therefore there should not be any impediment for her to visit Jalgaon on the scheduled dates of hearing of the proceedings. He would submit that there is suppression on the part of Applicant in incorrectly disclosing the fact that her 11 year daughter is residing in Pune with her. He would submit that the daughter is in fact residing with her grandparents in Jalgaon and is schooling from there. In so far as this submission is concerned, I will

not hold it against the Applicant at all as the Applicant is the mother and even if her daughter is residing in Jalgaon and schooling in Jalgaon, still she would undoubtedly be visiting her mother i.e. Applicant who is in service in Pune and therefore the theory of suppression is not accepted.

5.1. Next he would submit that the roznama which is placed on record would show the conduct of the Applicant in not attending the proceedings even in Pune and therefore that should disallow her from maintaining her present Application. In so far as this submission is concerned, it shall be open to the Respondent to take appropriate steps as available to him in law if Applicant derelicts in entering appearance in the proceedings before the Court. There are several other submissions which are also argued by Mr. Chaudhari, *inter alia*, with respect to issuance of two arrest warrants against the Applicant as also the Applicant's contention about parentage of the child as also with respect to access of the daughter to the Respondent which I do not find much relevant to be discussed over here as according to me they are not material for considering the present Application seeking transfer under Section 24 of the CPC. However, Respondent shall take appropriate steps with respect to his other grievances in the pending proceedings and if any such steps are taken by the Respondent, the

concerned Court shall appropriately deal with the same strictly in accordance with law to ensure justice to the parties.

6. In so far as the present Application is concerned, Applicant being a lady and considering the grounds of hardship enumerated with respect to travel, stay as also convenience since the Applicant is in service, I am inclined to allow the present Application. However, considering the affidavit in reply filed by Respondent, I am also inclined to pass certain other directions to the Family Court, Pune.

7. As observed by the Supreme Court in the decision in case of **N.C.V. Aishwarya Vs. A.S. Saravana Karthik Sha**¹ the cardinal principal for exercise of power under Section 24 of the CPC is that ends of justice should demand the transfer of the proceedings and more so in matrimonial matters where 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. The Supreme Court has also held that in the prevailing socio-economic paradigm in the Indian Society, it is the wife's convenience which must be looked at while considering

1 AIR 2022 SC 4318

transfer. In so far as the present case is concerned and in view of the case made out by the Respondent, I also intend to pass directions for not only clubbing all matters before the Family Court, Pune but also to decide them as expeditiously as possible and within a time bound manner.

8. In view of my above observations, MCA is allowed in terms of prayer clause (b) which reads thus:-

"(b) That this Hon'ble Court may be pleased to transfer the Petition No. D-08/2019 from the Ld. Family Court, Jalgaon to the Ld. Family Court, Pune."

9. As requested by Mr. Chaudhari, I am inclined to direct the learned Family Court, Pune who shall now be seized with hearing of the proceedings to club all matters between the parties together and also determine and decide the same as expeditiously as possible and in any event within a period of six months from today. There is a reason and purpose as to why the time frame of six months is granted and the learned Trial Court shall ensure that it shall be strictly adhere thereto. Parties shall cooperate with the Trial Court and shall not seek unnecessary adjournment unless it is absolutely necessary in case of any urgency or emergency.

10. Learned Family Court at Jalgaon shall act on a server copy of this order and not insist on a certified copy of the order for transfer of the proceedings to the Family Court, Pune and ensure that the

proceedings are sent immediately without any delay and in any event within a period of two weeks from today on producing a server copy of this order by the Advocates for the parties before the Registry of that Court.

11. All contentions of the parties are expressly kept open without opining anything on merits which shall be noted by the Family Court, Pune. Any observations made in this order shall not influence the decision of the Family Court while deciding the proceedings.

12. With the above directions, MCA is allowed and disposed.

[MILIND N. JADHAV, J.]

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