

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISCELLANEOUS CIVIL APPLICATION NO.58 OF 2024

Khanjan Hitendra Jasani

.. Applicant

Versus

Krupali Khanjan Jasani and Anr.

.. Respondents

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- Mr. Ashutosh Kulkarni a/w. Mr. Gaurav Sharma and Ms. Rajnni Kutty i./by Avyukta Legal, Advocates for Applicant.
- Mr. Anoshak Davar a/w. Mr. Raghavendra Mehrotra and Ms. Samrudhi Gholap i./by Lawkhart Legal, Advocates for Respondent No.1.
- Mr. Uttam Rane, Advocate for Respondent No.2.

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CORAM : MILIND N. JADHAV, J.

DATE : SEPTEMBER 04, 2024

ORAL JUDGMENT:

1. Heard Mr. Kulkarni, learned Advocate for Applicant; Mr. Davar, learned Advocate for Respondent No.1 and Mr. Rane, learned Advocate for Respondent No.2.

2. Miscellaneous Civil Application seeks transfer of C.C. No.400054/DV/2023, proceeding filed under the Protection of Women from Domestic Violence Act, 2005 (for short '**D.V. Act**') by Respondent – Wife before the Additional Chief Metropolitan Magistrate, 4th Court at Girgaon, Mumbai to the Family Court at Bandra, Mumbai and further direction to club both proceedings together and be heard together. Application is filed by husband.

3. Mr. Davar would submit that he has instructions to oppose

the Miscellaneous Civil Application. He would submit that there are four proceedings which are pending between parties. The first is Marriage Petition No.A-2787 of 2023 filed by Applicant – husband in the Family Court at Bandra. The second is a Civil suit seeking declaration against the Respondent – wife filed by mother of the Applicant - husband in the Bombay City Civil Court, at Mumbai with respect to a flat. The third is a Civil suit filed by the husband seeking restraint / injunction against Respondent – wife from interfering with his residence in Bangalore. The fourth is the complaint filed by Respondent – wife under the D.V. Act in the Court of the Additional Chief Metropolitan Magistrate, 4th Court at Girgaon, Mumbai.

4. He would submit that three proceedings are filed against Respondent – wife as against the complaint under the D.V. Act filed by her against the Applicant. He would submit that the D.V. Act proceedings is at an advanced stage and the concerned Court is considering Interim Application filed by Respondent - wife and next date of hearing is on 10.09.2024. He would submit that on the previous date of hearing it was stated before this Court that the pending Interim Application be decided by the said Court hearing the complaint and only thereafter further proceedings under the D.V. Act be transferred to the Family Court.

5. Another submission made by Mr. Davar to oppose the

Miscellaneous Civil Application is on the basis of an incorrect statement made by Applicant in paragraph Nos.3.5 and 3.6 of the Miscellaneous Civil Application which states that Respondent No.1 had appeared through Advocate on 10.11.2023 and it is only merely to harass the Applicant and as a counter blast to the Applicant's divorce Petition filed in the Family Court that the Respondent has filed the complaint under the D.V. Act.

6. Mr. Kulkarni appearing for Applicant refutes the submissions made by Mr. Davar. He would infact submit that the Marriage Petition was filed on 30.10.2023, which was immediately followed by filing of the suit for injunction by mother of Applicant on 08.11.2023. Thereafter he would submit that on 23.11.2023, statement was made by Respondent before the Bombay City Civil Court that she would not enter into the suit flat in respect of which injunctive relief was prayed. He would next submit that on 24.11.2023, that is immediately on the very next day, Respondent filed a complaint under the D.V. Act before Girgaon Court. Mr. Davar would submit that the statement made by Respondent on 23.11.2023 has been withdrawn by her on 11.12.2023.

7. The sum and substance of the above submissions is that according to Respondent, Application for transfer of proceedings under the D.V. Act to the Family Court at Bandra should not be allowed and both proceedings i.e. Marriage Petition and D.V. Act proceeding should

be allowed to be proceeded with in their respective Courts as they are. Mr. Davar has relied upon decision of this Court in the case of **Anuraag Agarwal V/s. Poonam Agarwal nee Mukim**¹ (Coram : Arun R. Pednekar, J.) to contend that this Court has taken cognizance of various previous decisions passed by this Court as also the Supreme Court and has infact carved out a principle with respect to question of conflict between the proceedings under the D.V. Act and the Marriage Petition in the Family Court and has enumerated some principles in paragraph No.14 of the said decision. He has placed the said decision before me. I have perused the same. According to him, the D.V. Act proceedings give a statutory right to choose the forum to the Respondent – wife which cannot be taken away by the provisions of Section 24 of the Code of Civil Procedure, 1908 (for short “**CPC**”).

8. In the facts of the present case it cannot be said that exercising the decision of transfer under Section 24 of the CPC will take away the right of the wife to choose the forum under the D.V. Act, as also the exercise of power of transfer. What I find in the said decision is that the said decision has not considered the decision of the Supreme Court in the case of **N.C.V. Aishwarya Vs. A. S. Saravana Karthik Sha**² which was infact available at that time. Incidentally it is seen that, some other decisions which are referred to therein of this

¹ Miscellaneous Civil Application No.159 of 2023 dated 09.07.2024.

² AIR 2022 SC 4318

Court have considered the above referred Supreme Court decision. The Supreme Court has in the shortest possible words etched out the principles underlying Section 24 of the CPC in paragraph Nos.9 to 12 of the said decision. Apart from enumerating the principles of transfer under Section 24 of the CPC, the Supreme Court has also touched upon and answered the question of clubbing the proceedings namely Marriage Petition and D.V. Act proceedings and more specifically in matrimonial matters and also directed the jurisdictional Court to try the said proceedings together and more so in the cases where proceedings under D.V. Act are required to be transferred to be decided together with the Marriage Petition by the Family Court which has the jurisdiction. Though the Supreme Court has also stated in the said decision that given the prevailing socio-economic paradigm in the Indian Society, generally it is the wife's convenience which must be looked at while considering such a transfer, but that would have to be looked in this case from the view point of proximity of distance and time as both proceedings in this case are tried in the Courts at Mumbai, one at Girgaon and the other at Bandra.

9. In the present case that finding of the Supreme Court will not be applicable in view of the fact that proceedings are required to be transferred from Girgaon Court, Charni Road to Family Court at Bandra. This decision of the Supreme Court was not placed before the Court which decided the case of **Anuraag Agarwal V/s. Poonam**

Agarwal nee Mukim (*first supra*).

10. For the sake of convenience and reference, paragraph Nos.9 to 12 of the decision in the case of **N.C.V. Aishwarya Vs. A. S. Saravana Karthik Sha** (*second supra*) are reproduced hereinbelow:-

“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 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.

12. Resultantly, the appeal succeeds and is accordingly allowed. The Order dated 19.11.2020 passed by the High Court in TR.C.M.P. No.473 of 2020 is set aside. We direct transfer of F.C.O.P. No.125 of 2020 pending consideration before the Family Court, Vellore to the jurisdictional Family Court at Chennai. We also direct the clubbing of the aforementioned three cases so that a common order may be passed by the concerned Family Court at Chennai.”

11. From the above, it is seen that 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. However, Supreme Court has also said that when two or more proceedings are pending between the same parties which raise common questions of fact and law and when the decision of the cases are interdependent, it is desirable that they should be tried before the same Judge so as to avoid multiplicity in trial of the said proceedings and conflict of decisions. In this regard, Supreme Court has also given its imprimatur to club both the proceedings together and to be tried together by the same Court. In the present case, undoubtedly it would be in the interest of justice if the proceedings / complaint filed under the D.V. Act by Respondent - wife is transferred to the Family Court where the Marriage Petition is pending. I am inclined to follow the imprimatur of the Supreme Court which broadly encompasses the power of Section 24 of the CPC while considering the transfer Application under Section 24 of the CPC.

12. The extent of power of the High Court under Section 24 of the CPC is explained by the Supreme Court in a later decision of the Supreme Court in the case of *Shah Newaz Khan and Ors. Vs. State of Nagaland and Ors.*³. That apart, power of the Family Court under the

³ (2023) 11 SCC 376

Family Courts Act, 1984 has been well explained by this Court in an unreported decision in the case of ***Sandip Mrinmoy Chakraboarty Vs. Reshita Sandip Chakrabarty & Anr.***⁴ wherein this Court has held that the Family Court is competent to exercise all jurisdiction exercisable by any District Court or any subordinate Civil Court under any law for the time being in force in respect of suits and proceedings referred to in the explanation appended to Section 7 and for the purpose of exercising such jurisdiction under such law, is deemed to be a District Court or as the case maybe subordinate Civil Court for the area to which the jurisdiction of the Family Court extends. It would be helpful to reproduce paragraph Nos.12 and 13 of the said decision herein which would otherwise answer the apprehension of the Respondent. Paragraph Nos.12 and 13 of the said decision read thus:-

“12. On having bird's eye view of the two Enactments, it is apparent that the two Enactments provide for overriding remedies and reliefs. The forum of Family Court established under Section 3 of the Family Courts Act, 1984 is competent to exercise all the jurisdiction exercisable by any district Court or any subordinate civil Court under any law for the time being in force in respect of suits and proceedings referred to in the explanation appended to Section 7 and for the purpose of exercising such jurisdiction under such law, is deemed to be a district Court or, as the case may be, subordinate civil Court for the area to which the jurisdiction of Family Court extends. The suits and proceedings amenable the jurisdiction of the Family Court are the suits and proceedings between the parties to a marriage for a decree of nullity, or for restitution of conjugal rights or for judicial separation or dissolution of marriage. The Family Court would also exercise its jurisdiction over the property of the parties to a marriage, injunction for circumstances arising out of marital relationship, declaration as to legitimacy of any person, proceedings for maintenance, guardianship, custody of children, access of children etc. The

4 Civil Writ Petition No.4649 of 2015 decided on 06.09.2018

Family Court thus exercises the powers of a civil Court and by virtue of Section 10 of the said Act, it is deemed to be a civil Court and has all the powers of such a Court. By sub-section (1) of Section 10 of the Family Courts Act, 1984, the provisions of the Code of Civil Procedure is made applicable to the suits and proceedings before the Family Court except the proceedings under Chapter IX of the Criminal Procedure Code, 1973, which continue to be governed by the provisions of Code of Criminal Procedure, 1973.

As far as the conduct of proceedings under the Domestic Violence Act, 2005 is concerned, the proceedings are initiated on an application being preferred by an aggrieved person or a protection officer or any other person on behalf of the aggrieved person seeking various types of reliefs which the Magistrate is competent to grant under Chapter IX. Section 28 prescribes that all the proceedings under Section 12, 18, 19, 20, 21, 22 and 23 are governed by the Code of Criminal Procedure, 1973. It is, however, permissible for the Court to lay down its own procedure for disposal of an application under Section 12 or under sub-section 2 of Section 23. Since the Code of Criminal Procedure do not contain any provision to grant ex-parte and interim orders, the legislature deemed its fit and expedient to introduce Section 23 and confer the Magistrate with the specific power to pass such interim order as he deems fit and proper. The Family Court which exercises the jurisdiction of a Civil Court and which is deemed to be a Civil Court, would exercise all the powers of a Civil Court and it is needless to say that it would include the power to grant injunction or any interim orders of any nature by virtue of Order XXXIX Rules 1 and 2. It is also empowered to pass interlocutory orders so as to protect the subject matter of the proceedings. Thus, the Family Court which is deemed to be a civil Court possesses all the powers of a civil Court including its inherent power to grant interim relief, and therefore, a Section analogous to Section 23 of the Domestic Violence Act, 2005 do not find place in the Family Courts Act, 1984.

13. Coming to the present controversy which this Court is called upon to deal with viz. relief that is sought for transfer of proceedings pending on the file of the learned Judicial Magistrate First Class at Cantonment Court, Pune to the Family Court at Pune, the apprehension expressed by the learned counsel for the respondents that the Family Court is not clothed with the powers as the one which is conferred on the Magistrate under Section 23 of the Domestic Violence Act, 2005 is misconceived and since it is already noted above that the Family Court which acts as a Civil Court and since it is vested with all powers of Civil Court which includes specific provision to pass interim orders, the said apprehension can be dispelled and it is to be noted that the Family Court is competent not only to deal with the application preferred under Section 12 and specifically in the light of the powers conferred by Section 26 of the

Domestic Violence Act, 2005 the relief available under Section 18, 19, 20, 21 and 22 can be sought in proceeding before the Family Court and the Family Court being a Civil Court is empowered to exercise all the powers of the Civil Court which would include a power to grant interim and ex-parte orders.”

13. That apart, the ground that proceedings at different stages as being one of the ground for objecting the transfer, is once again completely misplaced. On a reading of paragraph No.17 of the aforesaid decision which is reproduced hereinbelow, the said apprehension is also addressed squarely:-

17. On careful reading and an understanding of the scheme and the purpose of the two Enactments, I am of the opinion that in order to avoid the multiplicity of litigations and in the interest of the parties, it would be appropriate that the power under Section 24 can be exercised and the proceedings can be clubbed together. Though the learned counsel for the respondents has pointed out that the proceedings have moved ahead and now at this stage if the proceedings are transferred, it would cause prejudice, I am of the opinion that such apprehension is totally misfounded as the Family Court is competent in its jurisdiction to continue the proceedings from the stage at which it has reached and since under Section 10 of the Family Court is also competent enough to derive its own procedure, it will find out its way to ensure that the proceedings are tried in effective and expeditious manner. It would attempt an expeditious disposal of both the said proceedings which are pending since 2013 and 2014 respectively. Since the evidence of the respondent wife in the Domestic Violence proceeding is already over, the Family Court is directed to rely upon the said evidence recorded in the Domestic Violence proceedings by the learned Judicial Magistrate First Class at Cantonment Court, Pune and from that stage by taking the said evidence which is already recorded, the Family Court would proceed further and the Family Court would also take into consideration the averments that have been raised in the Domestic Violence application preferred before the learned Judicial Magistrate First Class at Cantonment Court, Pune. Whatever the interim reliefs are in operation would remain in force when the proceedings are pending before the Family Court.”

14. In that view of the matter, I reject the submissions made by Mr. Dawar.

15. In view of the above, Miscellaneous Civil Application stands allowed in terms of prayer clause (b) which reads thus:-

“b. this Hon’ble Court may be pleased to transfer C.C.NO. 400054/DV/2023 filed under Section 12 r/w 23 of The Protection of Women from Domestic Violence Act,.2005, before he Learned Additional Chief Metropolitan Magistrate, 4th Court at Girgaon, Mumbai to the Learned. Family Court at Bandra, Mumbai with the directions that same be heard along with Petition No. A-2787 of 2023;”

16. There is one more request made by Mr. Davar which on consideration can be allowed in this case as the request *prima facie* appears to be genuine in the facts of this case. Respondent has filed Interim Application in the D.V. Act proceedings which has been numbered as Exhibit-7 and Exhibit-8 in 54/DV/2023 before the Additional Chief Metropolitan Magistrate, 4th Court at Girgaon, Mumbai. When the proceedings under the D.V. Act will be transferred, it is directed that this particular Application shall be heard by the Family Court within a period of four weeks from today.

17. Parties are directed to co-operate with the learned Family Court in that regard. Family Court is directed not to give adjournments to the parties and to give adjournments only if they are utmost necessary due to any emergency or exigency and it shall only be at the discretion of the Family Court. Mr. Kulkarni is gracious enough to not object to the Application.

18. All concerned Courts shall act on a server copy of this order

and not insist on the certified copy.

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

H. H. SAWANT

[MILIND N. JADHAV, J.]

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SAWANT

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Date:
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