

Ajay

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

MISC. CIVIL APPLICATION NO. 78 OF 2024

Prashant Vivek Nagpal and Ors.

.. Applicants

Versus

Zahabiya Prashant Nagpal

.. Respondent

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- Ms. Jai Vaidya a/w. Ms. Chinmayee Vaidya, Advocates for Applicants.
 - Mr. Tushar N. Halwai, Advocate i/by Mr. Ravi Gurnanani for Respondent.
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CORAM : MILIND N. JADHAV, J.

DATE : SEPTEMBER 20, 2024.

P.C.:

1. Mentioned at the time of rising due to exigency mentioned by both the learned Advocates. Misc. Civil Application (for short “MCA”) is on Board at Sr. 29. Taken up immediately for hearing by consent.

2. Heard Ms. Vaidya, learned Advocate for Applicants and Mr. Halwai, learned Advocate for Respondent – wife and perused the pleadings.

3. Present MCA seeks transfer of Cri. Misc. Application No.67/DV/2023 filed by Respondent – wife under the Protection of Women From Domestic Violence Act, 2005 initially in the Bhoiwada, Mumbai and now presently pending before the 62nd MM Court,

Sewree, Mumbai to the Family Court at Bandra, Mumbai.

4. Ms. Vaidya on behalf of Applicants would contend that Family Court is seized with hearing of Marriage Petition bearing No.334 of 2024 which is filed in the Family Court at Bandra and hence the request for transfer of the DV Act proceeding is made.

5. At the outset, Mr. Halwai, learned Advocate for Respondent – wife would submit that there is a preliminary objection in as much as the present MCA has been filed one day prior to the filing of the Marriage Petition and in support of his objection, he has placed on record the case history status from the E-Court Services to show that filing date of MCA in this Court is on 07.02.2024 and registration is on 17.02.2024, whereas the filing date of Marriage Petition in the Family Court, Bandra, Mumbai is on 18.02.2024. He would therefore submit that, in that view of the matter, present MCA ought not to be considered. I have perused the same. The objection is unnecessarily hyper technical and cannot be countenanced. Difference of one day in filing cannot be attributable to any motive on the part of Applicant. It is the Advocates who do the filing of matters and the parties cannot be held to be responsible. The objection is overruled. Next he would submit that Respondent has undergone a medical emergency and ailment herself. He would submit that she has been a practicing Advocate at the bar also. He would submit that proceedings before the

DV Court are at the stage of evidence and therefore transfer of the said proceedings to the Family Court would be detrimental to the prospect of Respondent – wife.

6. *PER CONTRA*, Ms. Vaidya, learned Advocate for Applicants would submit that it would be in the interest of justice as also both the parties to the proceedings, if the DV Act proceedings are transferred from the Court at Sewree to the Family Court, Bandra so as to avoid multiple trials and conflict of decisions by two different Courts since the issues between the parties in both the proceedings would be interdependent on each other.

7. I have perused the pleadings and considered the submissions made by learned Advocates and more specifically Respondent – wife in this case. I am however inclined to agree with the submissions made by the learned Advocate for Applicants in the present case as those submissions are in consonance with the imprimatur of the Supreme Court in the case of *N.C.V. Aishwarya Vs. A.S. Saravana Karthik Sha*¹ as enunciated in paragraph Nos.9 to 12 of the said decision. For reference, paragraph Nos.9 to 12 are reproduced below and they read thus:-

“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

¹ AIR 2022 SC 4318

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.”

8. The argument advanced by the learned Advocate for Respondent with respect to the stage of the DV Act proceedings is also duly addressed in the decision of the learned Single Judge of this Court (Coram: Smt. Bharati H. Dangre, J.) in the case of ***Sandip Mrinmoy Chakraborty Vs. Reshita Sandip Chakraborty and Anr.***². It is seen that the powers of the Family Court are quite extensive and wide enough to

² Cri. WP. No.4649 of 2015 decided on 06.09.2018.

try and consider both the proceedings together, and infact it would be in the interest of justice, if both proceedings are clubbed together and decided by the Family Court itself at Bandra. Undoubtedly, request made by Mr. Halwai on behalf of Respondent – wife to permit her to appear on VC is required to be granted in the facts of the present case.

9. Learned Family Court at Bandra is directed and shall permit the Respondent to appear on VC in the said proceedings once the proceedings are clubbed together and heard together before the Family Court at Bandra.

10. In view of my above observations and findings, MCA stands allowed in terms of prayer clause (a) which reads thus:-

“a) The Hon’ble Court be pleased to exercise its extraordinary powers under Section 24 of the Civil Procedure Code and/or Article 226/227 of the Constitution of India, calling for the DV proceedings bearing Cri. Misc. Appln. no. 67/DV/2023 pending before the Hon’ble 62nd MM Court at Dadar (Shivdi), Mumbai to be transferred to the Hon’ble Family Court at Bandra, Mumbai where the divorce petition bearing e-filing lodging no. AMH20210050331C202400001 is pending for numbering.”

11. It is clarified that the Family Court, Bandra, Mumbai shall permit Respondent to appear on VC on all scheduled dates of hearing and shall exempt her physical presence. Equally, Applicants shall also be permitted to appear on VC, if they so require.

12. Both the concerned Courts shall act on a server copy of this order and shall not insist on production of a certified copy of this order

and ensure that transfer of proceedings, re-registration of the proceedings takes place within a period of two weeks from the date on which a server copy of this order is tabled before them.

13. Liberty to apply.

14. It is informed to me by both the learned Advocates at the bar that video conferencing facility is not available in the Family Court at Bandra, Mumbai. In that view of the matter, learned Family Court at Bandra shall permit the parties to appear on VC through their mobile phones and ensure that the proceedings are taken to its logical end strictly in accordance with law. Registry is directed to call for remarks from the Chief Judge of the Family Court, Mumbai if whether the VC facility is available or otherwise in the Family Court at Bandra, Mumbai. If the same is not available, it shall immediately be reported to me. This is so because, when matters are transferred to the Family Court, Bandra, similar requests to appear on VC are required by me from parties. If the facilities are not available, then further directions will have to be passed accordingly to make the facility available in the immediate future.

15. With the above directions, MCA stands allowed and disposed.

[MILIND N. JADHAV, J.]

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