

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO. 102 OF 2024

Dipti Yogesh Sonar .. Applicant
Versus
Yogesh Subhash Sonar .. Respondent

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- Mr. Vishal Dushing a/w Mr. Vaibhav Salvi for Applicant
 - Ms. Sushma Barhate for Respondent
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CORAM : MILIND N. JADHAV, J.

DATE : SEPTEMBER 25, 2024

P. C.:

1. Heard Mr. Dushing, learned Advocate for Applicant and Ms. Barhate, learned Advocate for Respondent.

2. By the present Misc. Civil Application (MCA), Applicant-wife seeks transfer of Marriage Petition No. 141 of 2023 filed by Respondent - husband before the learned Civil Judge Senior Division, Wadgaon Maval, Pune to Civil Court Senior Division, Dhule where the Applicant is residing along with her family.

3. Apart from the proximity of distance between the two destinations which is clearly evident, Applicant is required to provide care and support for her 9 year old daughter who is studying in a CBSE school in Dhule. The grounds enumerated in clause IV of the MCA have been perused by me and after going through the same and considering the difficulties and hardship that would be encountered by

Applicant, I have no doubt in my mind that present MCA deserves to be allowed.

4. *Per contra*, Ms. Barhate has vehemently objected to grant of present MCA. She would submit that Respondent - husband has to provide care and support for his own parents who are residing with him. She would draw my attention to the affidavit in reply dated 29.04.2024 filed by Respondent and would submit that Respondent - husband is in fact providing for the education of the daughter and in that regard, she would rely upon the admission receipt of daughter dated 12.07.2024 in respect of school fee paid by Respondent. That apart, she would submit that parents of Respondent are old and require medical attention and in support thereof, she has appended discharge summary and follow-up papers of Respondent's father who was admitted to hospital sometime in January 2024 and prescription slips of mother of Respondent given by Doctor in January 2024 for her medical issues. I have perused the same. Ms. Barhate would submit that Respondent is also paying tuition fees of the daughter as also for the transport facilities for daughter and in that view of the matter, he is ready and willing to pay all expenses to the Applicant - wife if she would travel to Pune to attend the proceedings. She has placed reliance on the decision of the Supreme Court in the case of **Anindita**

Das Vs. Srijit Das¹ and would submit that in that case in somewhat similar facts, Supreme Court had dismissed the transfer Application / Petition of wife and the Respondent was directed to pay all travelling expenses and three star hotel expenses of wife and her companion for each and every occasion when she would be required to travel to Delhi for the case.

5. I have heard the submissions made by respective Advocates and perused the pleadings as also the decision of the Supreme Court referred to and replied by learned Advocate for Respondent. The facts in the said case are different and cannot be *ipso facto* applied to the present case. It is seen that the inconvenience that may be caused to the Applicant herein would far outweigh the submissions made on behalf of Respondent in the present case. Respondent is in private service. I am informed across the bar by his Advocate that Respondent is earning a salary of Rs. 50,000/- per month. This is so because in the Application filed by Applicant wife, it is stated that Respondent is earning a salary of Rs. 2 lacs per month. Be that as it may, what is important to be seen in such matters when an Application for transfer is made to the Court is the degree of difficulty to the wife. The ethos of Section 24 has been duly explained by the Supreme Court in a recent decision in the case of **N.C.V. Aishwarya Vs. A.S. Saravana**

¹ (2006) 9 SCC 197

Karthik Sha² in paragraph Nos. 9 to 11 thereof. The Supreme Court 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. In that view of the matter, the facts in the present case will have to be seen. It is seen that Applicant is required to provide care and support for her 9 year old minor daughter. If she is required to travel all the way from Dhule to Pune and that too in suburban Pune called Wadgaon Maval, Pune where she would have to undertake a break journey at Pune to travel to Wadgaon Maval, it would be extremely difficult for her to undertake such a journey. That apart she would require accompaniment of an elder / parent considering her safety. Therefore the difficulty and hardship of Applicant wife is much more as compared to the reasons given by Respondent - husband in his affidavit in reply. Respondent can undoubtedly undertake the journey to Dhule as and when required and his grievance can be partially redressed by this Court by permitting him to appear on VC before the Court in Dhule, if his presence is not specifically required on the scheduled hearing dates. In view of my above observations and findings, I am not inclined to

² AIR 2022 SC 4318

accept the submissions made by the learned Advocate for Respondent on the basis of the decision of the Supreme Court in the case of *Anindita Das (first supra)* since this Court will have to consider the ethos of Section 24 of CPC in the facts governing the case at hand and the imprimatur of the Supreme Court in the case of *N.C.V Aishwarya (second supra)*.

6. In view of the above observations and findings, MCA is allowed int terms of prayer (a) which reads thus:-

(a) *Be pleased to transfer the Marriage Petition No. 141 of 2023 filed by the Respondent -husband before Ld. Court of C.J.S.D. Wadgaon Maval, Pune, Maharashtra to the Court of Ld. C.J.S.D., Dhule.*

7. Needless to state that learned Civil Judge Senior Division, Dhule shall permit Respondent to appear through VC on scheduled dates of hearing and if Respondent makes any such Application, learned Court shall duly consider the same in accordance with law.

8. MCA is allowed and disposed.

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[MILIND N. JADHAV, J.]

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by RAVINDRA
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Date:
2024.09.26
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