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

MISC. CIVIL APPLICATION NO. 118 OF 2024

Poonam w/o. Kapil Kawale @
Poonam Kudale Kawale

.. Applicant

Versus

Kapil s/o. Dwarkaprasad Kawale

.. Respondent

-
- Mr. Gajendra Jain, Advocate for Applicant through VC.
 - Mr. Arun Patil, Advocate for Respondent through VC a/w. Ms. Divya Wadekar.
-

CORAM : MILIND N. JADHAV, J.

DATE : SEPTEMBER 13, 2024.

P.C.:

1. Heard Mr. Jain, learned Advocate for Applicant and Mr. Patil, learned Advocate for Respondent. Both learned Advocates have appeared on Video Conference (VC) before the Court.

2. Present Misc. Civil Application (for short “MCA”) seeks transfer of Marriage Petition filed by Respondent – husband in the Family Court at Nagpur bearing Petition A No.301422 of 2016 to the Family Court at Pune where the Applicant residing.

3. Apart from the proximity of distance between the two destinations which is clearly evident, inconvenience and hardship of the Applicant has been enumerated in paragraph No.5 of the MCA. I have perused the same.

4. Mr. Patil, learned Advocate for Respondent would submit that the Petition has been filed by Respondent – husband in Nagpur in the year 2016 and Applicant – wife has not appeared during various hearings in the said Petition in the Family Court at Nagpur. In that regard, he would submit that Applicant’s request should not be granted since the Petition is now virtually at the end of its hearing and would be decided.

5. At the outset, it is seen that Applicant has filed Marriage Petition No.498 of 2021 in March 2021 in the Court of Civil Judge Senior Division, Pune. That apart, she has also filed Criminal Misc. Application bearing No.1026 of 2017 in October 2017 against the Respondent – husband in the Court of Judicial Magistrate First Class, Pimpri under the Protection of Women from Domestic Violence Act, 2005. Both these proceedings are pending.

6. Mr. Patil would contend that Applicant can attend the proceedings before the Nagpur Court on VC. I respectfully disagree with his submission as also his request since it would not only be inconvenient for the Applicant – wife but also in terms of allowing different Courts to undertake a trial of the same, rather common questions of facts and law will lead to conflict of decisions.

7. It is seen that Respondent – husband is an Architect by profession. He is in service and it is averred in the MCA that his

financial condition is good and he also owns immovable property and agricultural land.

8. The Supreme Court has reiterated the principle of hardship and convenience of the wife in transfer cases in the case of **N.C.V. Aishwarya Vs. A.S. Saravana Karthik Sha**¹ in paragraph Nos.9 to 12 therein. For convenience, said paragraph Nos.9 to 12 are reproduced herein 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 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

¹ AIR 2022 SC 4318

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.”

9. The Supreme Court holds that the cardinal principle for exercise of power under Section 24 of the Code of Civil Procedure, 1908 (for short “CPC”) is that the ends of justice should demand the transfer of the proceedings and more specifically so when matrimonial matters are concerned and Courts are called upon to consider the plea of transfer, the Courts have to take into consideration an array of factors which are stated and enumerated by the Supreme Court.

10. The Supreme Court has further given its imprimatur while holding that given the prevailing socio-economic paradigm in the Indian society, generally, it is the wife’s convenience which is to be looked at while considering the transfer.

11. Here is a case where the Marriage Petition is instituted by Respondent – husband in the year 2016. Applicant – wife has instituted the DV Act proceedings in the year 2017. She has thereafter filed Marriage Petition in the year 2021. Both proceedings filed by Applicant – wife are in Pune. It is seen that in 2023 Applicant had filed her MCA seeking transfer before the High Court, Bench at Aurangabad but Mr. Jain informs the Court that the said MCA was

subsequently withdrawn with liberty to file the present MCA before this Court.

12. Be that as it may, it is seen that grounds which are enumerated in paragraph No.5 of the MCA show that the Applicant – wife is dependent on her old mother and younger brother with whom she is residing in Pune. The hardship of the Applicant is evident. It would be absolutely difficult for her to travel all the way to Nagpur to attend the proceedings as she cannot be expected to travel alone and would require accompaniment of some family member with her. The costs as informed would also have to be borne by the Applicant and even if Respondent would be ready and willing to pay the travel and other expenses, still the hardship of the Applicant is clearly evident.

13. The Supreme Court has further held that in such a situation the transfer is inevitable, but it would also be just and proper to club the proceedings together so as to avoid multiplicity of proceedings and conflict of decisions primarily because the decisions in such cases are interdependent on each other and therefore it would be desirable that they should be tried together by the same Judge so as to avoid multiplicity in trial on the same issues and conflict of decisions.

14. In view of my above observations, the MCA stands allowed in terms of prayer clause 'B' which reads thus:-

“B) By way of appropriate order or directions in the like nature, the Hon’ble Court be pleased to transfer PETITION A No. 301422/2016 dated 15.12.2016 filed by the respondent against the applicant before the learned Family Court, Nagpur, under section 13 (1) of The Hindu Marriage Act, 1955 to the learned C. J. S.D., Pune.”

15. Learned Family Court, Pune is directed by this Court to club all proceedings together and decide the same together strictly in accordance with law.

16. MCA is allowed and disposed.

[MILIND N. JADHAV, J.]

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