

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO. 223 OF 2024

Pooja Vishal Nikam

.. Applicant

Versus

Vishal Sharad Nikam

.. Respondent

.....

- Mr. Sanjay Bhojwani for Applicant
- Mr. Ojas Kocharekar i/by Mr. Aditya Chandak for Respondent
(appeared through VC)

.....

CORAM : MILIND N. JADHAV, J.

DATE : SEPTEMBER 26, 2024

P. C.:

1. Heard Mr. Bhojwani, learned Advocate for Applicant and Mr. Kocharekar along with Mr. Chandak, learned Advocate for Respondent.
2. Present Misc. Civil Application (MCA) seeks transfer of Marriage Petition filed by Respondent - husband in Family Court at Nashik to Family Court at Pune where Applicant - wife resides along with her 3 & 1/2 year old daughter.
3. Apart from proximity of distance between the two destinations, hardship of the Applicant - wife is clearly evident. It is averred in the Application that Applicant has no relatives at Nashik and it would be inconvenient to her if she is required to leave her daughter in Pune or even if she is required to travel along with her. It is seen that both the parties are Doctors by profession. Undoubtedly hardship of the

Applicant would therefore be evident in view of the aforesaid facts and the grounds enumerated in the Application.

4. *Per contra*, Mr. Chandak, learned Advocate for Respondent would draw my attention to the affidavit in reply filed by Respondent which is appended at page Nos. 149-170 of the MCA. He has taken me through the same and has made two submissions thereafter. He would submit that Applicant can appear through VC. He would next submit that Respondent is ready and willing to incur all expenditure that would be incurred by Applicant to attend the proceedings at Nashik. It appears that there are certain orders passed in the Custody Petition and the parties had grievance with respect to compliance of the said orders. However, if there is any dereliction on the part of any of the party, the parties undoubtedly are at liberty to approach the Court and file and register their grievance appropriately. Merely because one of the party alleges breach of the orders cannot hold up disposal of the present MCA. The ethos of Section 24 has been duly explained by the Supreme Court in the decision in the case of **N.C.V. Aishwarya Vs. A.S. Saravana Karthik Sha**¹ in paragraph Nos. 9 to 11 thereof. 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

1 AIR 2022 SC 4318

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 the present case, hardship would be compounded by the fact that Applicant is required to provide care and support for her minor daughter. That apart pleadings also show that Applicant is residing with her mother in Pune. This adds to the woes of Applicant since she would require accompaniment of an elder / parent to travel and attend the hearing in Nashik considering her safety. That apart Applicant has also instituted proceedings under the D.V. Act as also Marriage Petition in the Family Court at Pune. There is one more additional proceeding under Section 9 filed by Respondent - husband which is pending in Pune.

5. Considering the aforesaid reasons which are clearly evident of the hardship that would have to be faced by Applicant - wife, I am not inclined to accept the submissions made by Mr. Kocharekar.

6. In view of the above, MCA is allowed in terms of prayer clauses (i) and (ii) which read thus:-

"(i) *This Hon'ble Court may be pleased to transfer the proceedings bearing P. D. No. 41 of 2023, Titled 'Vishal Sharad Nikam Vs. Pooja Vishal Nikam', filed by the Respondent pending on the file of the Learned Family Court, Nashik to the Learned Family Court No. 4, Pune to be tried and decided together with P.A No. 1870 of 2022 filed by the Applicant and P.A No. 2069 of 2023 filed by the Respondent.*

(ii) *This Hon'ble Court may be pleased to direct the transferee Court to expedite the trial in all the three proceedings bearing PA No.1870 of 2022, PA No. 2069 of 2023 and the transferred PD No. 41 of 2023 to be completed and disposed of within a period of six month or in a time frame as this Hon'ble Court may deem fit."*

7. Needless to state that Respondent can be permitted to appear through VC on the scheduled dates of hearing by the appropriate Court on such Application being made so that his profession and job will not be affected.

8. All concerned Courts shall take cognizance of a server copy of this order and shall not insist on a certified copy of the order and act accordingly for transfer and re-registration of the proceedings as expeditiously as possible and in any events within two weeks from the date of presentation of a server copy of this order to the Courts by the Advocates for the parties.

9. MCA is allowed and disposed.

[MILIND N. JADHAV, J.]

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