

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISCELLANEOUS CIVIL APPLICATION NO.245 OF 2024

Nitesh Hindurao Galave

.. Applicant

Versus

Pooja Nitesh Galave

.. Respondent

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- Mr. Laxman Kalel, Advocate for Applicant.
- Mr. Sarang Satish Aradhye a/w. Mr. Saarth Sunil Chordia, Mr. Shantanu Gurav and Ms. Shruti Kothavade, Advocates for Respondent.

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CORAM : MILIND N. JADHAV, J.

DATE : SEPTEMBER 05, 2024

P.C.:

1. Heard Mr. Kalel, learned Advocate for Applicant and Mr. Aradhye, learned Advocate for Respondent.

2. Miscellaneous Civil Application is filed by husband seeking transfer of criminal Miscellaneous Application No.913 of 2022 pending before 4th Joint Judicial Magistrate First Class, Pandharpur to learned 3rd Family Court, Bandra, Mumbai. The reason being that Applicant has instituted Hindu Marriage Petition No.A 2738 of 2024 in the Family Court at Bandra.

3. Mr. Kalel would submit that proceedings filed under the Protection of Women from Domestic Violence Act, 2005 (for short '**D.V. Act**') in the Court of 4th Joint Judicial Magistrate First Class, Pandharpur impleads the Applicant, his mother and his sister also. He

would submit that mother and sister undoubtedly have a certain degree of difficulty and hardship in travelling all the way from Mumbai to Pune as stated in the Application. Hence he would submit that the proceedings under the D.V. Act be transferred to Mumbai.

4. PER CONTRA, Mr. Aradhye would submit that the Application itself records the fact that the Respondent – wife is required to provide care and support to a four year old daughter who is residing with the Respondent in Pandharpur alongwith Respondent's parents. He would submit that Respondent is dependent on her parents for her livelihood and considering the minor daughter it would be unduly difficult for her to attend the proceedings in Mumbai. He would also submit that he has instructions to inform the Court that Respondent – wife is also in the process of filing her transfer Application under Section 24 of the Code of Civil Procedure, 1908 (for short '**CPC**') seeking transfer of the Hindu Marriage Petition No.A 2738 of 2024 filed by Applicant – husband in the Family Court, Bandra, Mumbai to the Court of Civil Judge Senior Division at Pandharpur.

5. I have considered the submissions made by Mr. Kalel and Mr. Aradhye and perused the pleadings. It is seen that the degree of difficulty, as also hardship that would be encountered by Respondent – wife in view of the facts of the case stated hereinabove would far outweigh the submissions and difficulty expressed on behalf of

Applicant – husband. Undoubtedly, the inconvenience that will be caused to Respondent when she would be required to travel all the way from Mumbai to Pandharpur leaving her four year old daughter which she would not in any case is quite evident. That apart, she would require accompaniment of her parents as also substantial costs and expenses that would be incurred by her.

6. The ethos of the provisions of Section 24 of the CPC as considered and enshrined by the Supreme Court in the decision of **N.C.V. Aishwarya Vs. A. S. Saravana Karthik Sha**¹ is that ends of justice should demand transfer of proceeding. Supreme Court holds that in matrimonial proceedings wherever Courts are called upon to consider the plea of transfer, the Court will have to take into account an array of factors into consideration namely the economic soundness of both the parties; the social status of the spouses; their behavioral pattern, their standard of life prior to the marriage and subsequent thereto and most importantly the circumstances of both the parties in eking out their livelihood and under whose protective umbrella they are seeking their present day sustenance to life. Supreme Court further holds 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 transfer. That apart, the Supreme Court has also held that when two or more proceedings are pending between the same parties

¹ AIR 2022 SC 4318

which raise common questions of fact and law and when the decisions of the cases are interdependent, it is desirable that they should be tried by the same Judge so as to avoid multiplicity in trial of the said proceedings and conflict of decisions. The aforesaid decision of the Supreme Court clearly applies to the fact of the present case.

7. Here is the case where the Hindu Marriage Petition No.A 2738 of 2024 is pending in the Family Court at Bandra, Mumbai whereas proceedings under the D.V. Act are pending in the Court of the Joint Judicial Magistrate First Class, Pandharpur. The Respondent – wife is residing in Pandharpur alongwith her parents and her four year old minor daughter whereas Applicant is residing in Mumbai.

8. The only grievance made by Mr. Kalel is with respect to the hardship caused to the mother and sister of Applicant which can undoubtedly be addressed by the Court by permitting them to appear through Video Conferencing. That apart, this Court is of the opinion that there are two different proceedings between the parties which raise common questions of fact and law. Both these proceedings will have to be clubbed together and will have to be directed to be tried together by one particular Court in the interest of justice.

9. Though I am aware of the fact that there is no specific application for seeking transfer of the Hindu Marriage Petition No.A 2738 of 2024 from Family Court, Bandra, Mumbai to Court of Civil

Judge Senior Division at Pandharpur, Mr. Kalel as also Mr. Aradhye, both the learned Advocates appearing for the respective parties across the bar in their usual fairness would consent if this Court passes an appropriate order for transfer of the said Hindu Marriage Petition No.A 2738 of 2024 without any hesitation. Such an order will undoubtedly enure to the benefit of all parties as also cut down protraction of litigation between the parties and undoubtedly is in the interest of both parties. It will also save the Respondent – wife from incurring time and expenditure in filing her MCA before this Court.

10. In view of my above observations and findings, Hindu Marriage Petition No.A 2738 of 2024 which is pending in the Family Court at Bandra is directed to be transferred to the Court of Civil Judge Senior Division at Pandharpur. Further the proceedings under the D.V. Act pending before the 4th Joint Judicial Magistrate First Class, Pandharpur are directed to be transferred to the Court of Civil Judge Senior Division at Pandharpur. The Court of Civil Judge Senior Division at Pandharpur is directed by this Court to hear and decide both the above proceedings together in accordance with law and determine them.

11. In so far as appearance of Respondent Nos.2 and 3 in the proceedings under the D.V. Act are concerned, the learned Court of Civil Judge Senior Division at Pandharpur shall preferably permit and

allow the Respondent Nos.2 and 3 to appear through Video Conferencing on all the scheduled dates of hearing.

12. All concerned Courts i.e. Family Court, Bandra, Mumbai; Joint Judicial Magistrate First Class, Pandharpur as also, Court of Civil Judge Senior Division at Pandharpur shall take cognizance of a server copy of this order and shall not insist on a certified copy of this order and act immediately in ensuring that the transfer and re-registration of the proceedings takes place without any delay.

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

H. H. SAWANT

[MILIND N. JADHAV, J.]

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