

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISCELLANEOUS CIVIL APPLICATION NO.248 OF 2024

Pushkar Santosh Solanki .. Applicant
Versus
Krutika Pushkar Solanki .. Respondent

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION (ST.) NO.10119 OF 2024

Pushkar Santosh Solanki .. Applicant
Versus
Krutika Pushkar Solanki .. Respondent

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• Mr. Amol B. Jagtap a/w. Mr. Amit Rathi, Advocates for Applicant.

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CORAM : MILIND N. JADHAV, J.

DATE : SEPTEMBER 05, 2024

P.C.:

1. Heard Mr. Jagtap, learned Advocate for Applicant. None appears for Respondent despite being served. Hearing of transfer Application cannot be protracted any longer. Both proceedings are tagged together by order dated 13.08.2024.

2. Affidavit of service dated 29.07.2024 is filed by the Applicant. Respondent has been served with both proceedings. Applicant has filed Miscellaneous Civil Application No.248 of 2024 seeking transfer of Marriage Petition No.4 of 2024 instituted by Respondent – wife under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights before Civil Judge Senior Division,

Rahta, Ahmednagar to Family Court, Pune. The Applicant also seeks transfer of proceedings under the Protection of Women from Domestic Violence Act, 2005 (for short '**D.V. Act**') filed by wife before Additional Chief Judicial Magistrate, Kopargaon being P.W.D.V.A No.04 of 2024 to the Family Court, Pune.

3. Mr. Jagtap would next submit that the Applicant has filed Marriage Petition for dissolution of marriage being Petition A.No.2266 of 2023 in the Family Court, Pune on 15.12.2023 which is the first in time proceeding instituted by Applicant. He would submit that as a counter blast to the filing of the Marriage Petition by the Applicant, the Respondent – wife has thereafter instituted four proceedings against the Applicant. One is Application under Section 9 in Ahmednagar. Second is the proceeding under D.V. Act before Additional Chief Judicial Magistrate, Kopargaon. Third is F.I.R. dated 30.12.2023 against the Applicant and his family members in Kondhwa Police Station, Pune. The fourth proceeding is Application under Section 125 of Code of Criminal Procedure, 1973 (for short '**Cr.P.C.**') before Judicial Magistrate First Class, Kopargaon.

4. In respect of the last proceeding, Mr. Jagtap would submit that Criminal Application under Section 407 of the Cr.P.C. has been filed by Applicant – husband seeking transfer of this proceeding under Section 125 Cr.P.C. to the Family Court at Pune.

5. Mr. Jagtap would draw my attention to the cause title of Application wherein the principal address of Respondent - wife is that of Pune. In that view of the matter, she has instituted proceedings under Section 498 – A of Indian Penal Code, 1860 (for short ‘**IPC**’) in Pune. He would submit that institution of the other three proceedings outside Pune, where the Marriage Petition of Applicant has been filed first in point of time and has remained pending and is being contested by Respondent – wife are filed merely to harass the Applicant. He would submit that it would enure to the benefit of the Respondent – wife and also all concerned if all proceedings are heard by the Family Court at Pune to avoid multiplicity of trials and conflict of decisions. On the issue of difficulty he would submit that said ground of hardship would not be applicable since Respondent herself resides in Pune and in that view of the matter, she having instituted the criminal complaint under Section 498-A of the IPC against Applicant and his family members is in Pune itself.

6. Next it is agitated by Mr. Jagtap that all aforesaid proceedings except the complaint filed under Section 498-A of the IPC would raise common questions of fact and law between the same parties and it would be detrimental to the prospects of either of the parties to have separate Courts deciding the common questions which are in fact interdependent on each other. He would therefore urge the Court that if the Family Court at Pune is directed by this Court to

determine the three proceedings of which transfer is sought and be heard alongwith the Marriage Petition filed by Applicant in Family Court at Pune, it will enure to the benefit of the parties. Considering the submissions advanced by Mr. Jagtap and the facts and circumstances of the present case which are referred to and alluded to hereinabove, I am inclined to accept the submissions of Mr. Jagtap and transfer the three proceedings and direct the learned Family Court at Pune to try them together which would undoubtedly enure to the benefit of the parties including the Respondent -wife.

7. Though the provisions of transfer under Section 24 of the Code of Civil Procedure, 1908 (for short '**CPC**') are required to be looked at from the point of view of making ends of justice meet, it is also equally important for the the Court to consider the convenience of the parties and especially so in matrimonial matters. In the present case, considering the fact that Respondent is a resident of Pune since she has also filed a criminal complaint against the Applicant and his family members in Pune and is prosecuting the same. The convenience of the Respondent would be met with and there can be no reason for her hardship. On the contrary, the Applicant requiring to travel to Ahmednagar and the two different Courts at Kopargaon to attend her own proceedings would be detrimental not from the perspective of causing any physical hardship to any party but from the perspective of having a conflict of decisions by different Courts.

8. In that view of the matter, Miscellaneous Civil Application and the Criminal Application deserves to be allowed in the interest of justice. In view of the above observations and findings, Miscellaneous Civil Application and Criminal Application (Stamp) No.10119 of 2024 filed under Section 407 of Cr.P.C. stand allowed.

9. Miscellaneous Civil Application No.248 of 2024 is allowed in terms of prayer clause (a) which reads thus:-

“a) That, this Hon'ble Court be pleased to transfer the Marriage petition no.4/2024 initiated by wife u/s 9 of the Hindu Marriage Act, 1955 for restitution of Conjugal Rights pending before the CJSD, Rahta, Ahmadnagar to Family Court, Pune and transfer of the D.V proceedings filed by the Wife which is pending before the Additional Chief Judicial Magistrate, Kopergaon bearing P.W.D.V.A No.04/2024 to Family Court, Pune.”

10. Criminal Application (Stamp) No.10119 of 2024 stands allowed in terms of prayer clause (a) which reads thus:-

“a) That, this Hon'ble Court be pleased to transfer the 125 CrPC proceedings bearing Criminal Misc Application No.20/2024 filed by Sau.Krutika Pushkar Solanki against Pushkar Santosh Solanki pending before the JMFC, Kopergaon to Family Court, Pune.”

11. With the above directions, Miscellaneous Civil Application and Criminal Application (Stamp) No.10119 of 2024 are allowed and disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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