

Kishor

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISCELLANEOUS CIVIL APPLICATION NO. 250 OF 2024

Harshada Anna Hemgude

.. Applicant

Versus

Parth Prashant Gite

.. Respondent

.....

- Mr. Amol B. Jagtap – Advocate for Applicant.
- Mr. Vaibhar R. Gaikwad – Advocate for Respondent.

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CORAM : MILIND N. JADHAV, J.

DATE : OCTOBER 3, 2024

P. C.:

1. Heard Mr. Jagtap learned Advocate for the Applicant and Mr. Gaikwad, learned Advocate for the Respondent. The present Misc. Civil Application [MCA] is for transfer of Marriage Petition No. A-02 of 2024 filed by the Respondent – husband from Family Court, Satara to the Family Court, Pune where the Applicant - wife is residing.

2. The Marriage Petition was filed in January 2024 and it has proceeded and progressed at an alarming speed before the Family Court at Satara. Undoubtedly it proceeded *ex-parte* against the Applicant. Mr. Gaikwad, learned Advocate for the Respondent – husband has stated that it proceeded *ex-parte* and Respondent – husband has led his evidence and completed his witness action in that Court. The Applicant – wife did not lead any evidence action and

hence, Family Court in Satara was constrained to list the said Petition for final arguments on 06.05.2024.

3. The present MCA as seen is filed on 15.03.2024. The Respondent was well aware of the fact about the present petition being filed. Be that as it may, the request made by Mr. Gaikwad to allow the Family Court at Satara to deliver the judgment cannot be countenanced nor can it be allowed. One of the reasons which persuades me to reject his request is because the Applicant–wife has gone completely un-represented before the Family Court. With the aid of both the learned Advocates, I have perused the Roznama and it is seen that the Applicant – wife appeared before the Family Court, Satara for the first time on 06.05.2024. This is the irony of the matter. The witness action of the Respondent – husband before the Family Court, Satara in Marriage Petition No. 2 of 2024 has virtually gone unchallenged. If that is the position it cannot lie in the mouth of the Respondent to make any submissions whatsoever to persuade this Court to allow the Family Court at Satara to deliver the final judgment. Grave injustice, *prima facie* has been meted out to the Applicant–wife in this case.

4. That apart, Paragraph No. 2 of the Application when perused, clearly makes out a ground for considering the hardship of the Applicant–wife which is evident therein. Apart from proximity of

distance between the two destinations which the Applicant–wife will have to undertake to attend the proceedings at Satara, she will require accompaniment of her parents. It is seen that Applicant is working in Pune in a company in a private job. In so far as Respondent – husband is concerned it is seen that he is an Advocate by profession and he is in fact attending Courts at Satara as well as at Pune and more specifically the Industrial Court at Pune where he practices actively.

5. Though Mr. Gaikwad would submit that the Applicant should be directed to attend the scheduled dates of hearing before the Family Court at Satara on whichever date convenient to her, the said submission is as insensitive as it can be made by and on behalf of Respondent. The ethos of Section 24 of Code of Civil Procedure has been illustrated by the Hon’ble Supreme Court in case of **N.C.V. Aishwarya Vs. A.S. Saravana Karthik Sha**¹ by laying down certain principles in paragraph No. 9 thereof which reads thus :-

“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

1 AIR 2022 SC 4318

wife's convenience which must be looked at while considering transfer."

6. That apart, it is seen that Applicant has filed D. V. Act proceedings in the Court of Judicial Magistrate First Class at Pune. If the present Application is allowed and the Marriage Petition is transferred from the Family Court, Satara to Family Court, Pune it would be in the interest of justice. D. V. Act proceedings are therefore transferred from the Court of JMFC Pune to the Family Court, Pune to be tried together alongwith the Marriage Petition. Mr. Jagtap in fact persuades the Court to pass such an order and his request is accepted.

7. In that view and the grounds stated in the Application alongwith the hardship that would be evident to the Applicant-wife, the Marriage Petition is required to be transferred from Family Court, Satara to the Family Court, Pune. The present Application is therefore allowed in terms of prayer clause (a) which reads thus :-

"(a) That, this Hon'ble Court be pleased to transfer the Petition filed by the Respondent/husband u/s 13(1)(ia) of the Hindu Marriage Act, 1955 bearing Petition No.A-02/2024 pending before the Family Court, Satara to Family Court, Pune in the interest of Justice, equity and good conscience."

8. It is directed that D. V. Act proceeding No. 111 of 2024 filed by Applicant-wife in the Court of Judicial Magistrate First Class, Pune is transferred to the Family Court at Pune and both proceedings i.e. the

Marriage Petition and D. V. Act proceeding is directed to be tried together strictly in accordance with law.

9. With the above directions, Application stands allowed and disposed of.

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[MILIND N. JADHAV, J.]

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