

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO. 253 OF 2024

Jyoti Kamalkumar Pathak

.. Applicant

Versus

Kamalkumar Ganesh Pathak

.. Respondent

-
- Mr. Gautam J. Jain a/w Mr. M.J. Bhatt for Applicant

.....

CORAM : MILIND N. JADHAV, J.

DATE : SEPTEMBER 5, 2024

P. C.:

1. Heard Mr. Jain, learned Advocate for Applicant.
2. Present Miscellaneous Civil Application seeks transfer of Marriage Petition No. 611 of 2017 filed by Applicant from learned 6th Joint Civil Judge Senior Division, Thane to learned Principal Judge, Family Court, at Thane.
3. Both the Courts incidentally are housed in the same building at Thane. Substantial time has been wasted for effecting service on Respondent. Various office notes beginning from 12.06.2024 onwards until today and the orders passed by the Court endorse the same. In fact at one point of time, this Court directed the Advocate for Applicant to serve the Advocate for Respondent in Trial Court since service effected on both the available addresses at Mumbai and UP was returned back.

4. Be that as it may, what is important to be noted by the Court in such proceedings is the substance of the proceedings and not the form. Here is Applicant-wife before me seeking transfer of her own Application filed under Section 9 of the Hindu Marriage Act, 1955 to the Family Court. Undoubtedly there is a Petition pending in the Family Court filed by the Respondent-husband. Issues in both the proceedings would be common between the same parties and when such common questions of fact and law as also the decision therein are involved and the cases are interdependent, the Supreme Court in the case of **N.C.V. Aishwarya Vs. A.S. Saravana Karthik Sha**¹ has held that it is desirable that they should be tried together before the same Judge so as to avoid multiplicity in trial of the same issues and conflict of decision by two different Courts. There can be no impediment whatsoever in allowing the present application as allowing this Application at the earliest instance will be justice rendered to the party rather both parties. In that view of the matter, learned Advocate has made out a clear case for allowing the present Application under Section 24 of the CPC in order to make the ends of justice meet which demands transfer of the proceedings. Application stands allowed in terms of prayer clause (a) which reads thus:-

“a) This Hon'ble Court be pleased to pass an order directing transfer of the Marriage Petition No. 611 of 2017 filed by the

1 AIR 2022 SC 4318

Applicant U/s. 9 of the Hindu Marriage Act, 1955 against the Opponent, from the file of the Ld. 6th Joint Civil Judge Senior Division, Thane, to the file of the Court of the Ld. Principal Judge, Family Court, at Thane;”

5. Learned Family Court at Thane shall take cognizance of this order and club both the matters together and try the same together strictly in accordance with law.

6. With the above directions, MCA stands allowed and disposed.

Amberkar

[MILIND N. JADHAV, J.]

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