



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISCELLANEOUS CIVIL APPLICATION NO. 416 OF 2024

Aniruddha Basu ...Applicant
vs.
Shruti Sethi Basu ...Respondent

Ms. Kanupriya Kejriwal a/w Ms. Nikita Bhansali and Mr. Param Shah i/by Yasmin Bhansali and Co.	Advocate for the Applicant
Mr. Manish Gala a/w Mr. Nilesh Gala a/w Mr. Minil Shah i/by Law square	Advocate for the Respondent

CORAM : S. M. MODAK, J.
DATE : 25th OCTOBER 2024

P. C. :-

1. Heard learned Advocate for the Applicant-Husband and learned Advocate for the Respondent-wife.
2. There are proceedings going on between both the Parties. Both are filed at the instance of the wife. Their details are as follows:-

(i) The Petition for divorce filed before the Family Court at Bandra in

the month of November 2021.

(ii) The Domestic Violence proceedings filed before the Court of Metropolitan Magistrate, Andheri. It was filed in the month of July 2024.

3. The Applicant-husband wants transfer of the Domestic Violence case from the Andheri Court to Family Court Bandra.

4. Both of them vehemently argued in support of transfer prayer and by way of opposing it.

5. Learned advocate for the Applicant-Husband relied upon the following judgments:-

(i) *Amogh Hegde Vs. Smita Rane Hegde* decided by this Court on 07th August 2024.

(ii) *Khanjan Hitendra Jasani Vs. Krupali Khanjan Jasani and Anr.* decided by this Court on 04.09.2024.

(iii) *Minoti Subhash Anand Vs. Subhash Manoharlal Anand*¹

(iv) *Rushabh H. Zaveri and Another Vs. Ashmi R. Zaveri and Anr.*²

(v) *Sandeep Chandraprakash Karde Vs. Pragati Prakash Badgujar*³

1 2015 SCC Online Bom 6113

2 2017 SCC Online Bom 5877

3 2020 SCC Online Bom 7782

(vi) *Sanket Sanjeev Khanolkar Vs. Surabhi Sanket Khanolkar*⁴

(vii) *Santosh Machindra Mulik Vs. Mohini Mithu Choudhari*⁵

(ix) *Vijay Suryakant Kakade Vs. Anushka Vijay Kakade and Ors.*

decided by this Court on 02.02.2023.

6. Whereas learned Advocate for the Respondent-Wife relied upon the following judgments:-

(i) *Sandeep Aggarwal Vs. Viniti Aggarwal*⁶

(ii) *Ankita Bhati Vs. Dev Raj Singh Bhati* decided by the Hon'ble Supreme Court in Transfer Petition (Civil) No. 1779 of 2021, on 13.07.2023.

(iii) *Anuraag Agarwal Vs. Poonam Agarwal nee Mukim* decided by this Court in Misc. Civil Application No. 159 of 2023 on 09.07.2024

(iv) *Arul Daniel and Others Vs. Suganya*⁷

7. The law on the point of transfer of the matrimonial cases is almost settled. The following are the parameters which are required to be considered:-

4 2021 SCC Online Bom 5234

5 2019 SCC Online Bom 13101

6 2021 SCC Online Del 1524

7 2022 SCC Online Mad 5435

- (i) Who is seeking transfer? Normally, the convenience of Wife is given predominance.
- (ii) The nature of reliefs sought in all the proceedings.
- (iii) Whether the Court to which proceeding is transferred can grant relief?
- (iv) Whether there will be conflict of Orders?

8. On the basis of above parameters when factual aspects are verified, what I find is the divorce petition was filed prior in time. It is true that there is only prayer for divorce and no interim reliefs are sought. Whereas in Domestic Violence case, several interim reliefs are sought.

9. It is true that learned Magistrate has not heard both the Parties on interim reliefs. Both the spouses are having one minor daughter. The Respondent-wife is having custody of the minor daughter, but daughter is also visiting the Father occasionally. Parties themselves have decided this arrangement. There is consensus amongst both of them on this issue. It seems that both the spouses are working. Ultimately, the Court has to consider the observations in the various judgments on one hand and correlate it to factual aspect.

10. There is also submission made on behalf of the Respondent-Wife that the Family Court is granting longer adjournment and the copy of the roznama from the Website is tendered. It is true that the Family Court is granting two months adjournment. As on today, the marriage petition before the Family Court is fixed for recording of evidence. Ultimately, the Court has to adjust the board depending upon the stage of the proceedings.

11. This Court is aware that there are certain vacant Courts in the Family Court at Bandra. However, considering the factual aspects, I am inclined to allow the application. It is for the reason that the Respondent-Wife has not sought for interim reliefs at the beginning from the Family Court. What I find those interim reliefs if were sought before the Family Court and the Family Court has not passed any Order then the question is different. But situation is different. The Respondent-Wife has moved as per the provisions of the Protection of Women from Domestic Violence Act lateron.

12. So considering this aspect, I am allowing the transfer application. The Family Court can be asked to deal with the interim application on the priority basis. With these observations, following order is passed:-

ORDER

- (i) Misc. Civil Application is allowed.
- (ii) The proceedings No. CC/181/DV/2024 pending before the Court of the JMFC, Andheri be transferred to the Family Court, Bandra.
- (iii) After transfer this Domestic Violence case be allotted to the Court wherein marriage petition A-34981 of 2021 is pending.
- (iv) The judge presiding over that Family Court is directed to hear the interim application in Domestic violence case on the priority basis.
- (v) The Court of the Magistrate is directed to transfer the record.
- (vi) Both the Parties can appear before Family Court in that Domestic Violence case on 11th December 2024. No notice is required to the Parties.
- (vii) In view of that the Applicant-husband is directed to co-operate hearing of the interim application without seeking adjournment.

13. Misc. Civil Application is disposed of.

[S. M. MODAK, J.]