



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISCELLANEOUS CIVIL APPLICATION NO. 466 OF 2024

Aaditya Anant Naik

...Applicant

vs.

Shamani Aaditya Naik and Anr.

...Respondents

Mr. Khajotia Jahangir Minoo	Advocate for the Applicant
Abhay Khandeparkar, Senior Advocate a/w Adv. Sameer Tendulkar	Advocate for the Respondent Nos. 1 and 2

CORAM : S. M. MODAK, J.

DATE : 29th NOVEMBER 2024

P. C. :-

1. Heard learned Advocate for the Applicant-husband and learned Senior Advocate Shri Khandeparkar for the Respondent-wife.

2. There are two proceedings pending in between them. They are as follows:-

(a) Domestic violence proceeding No. 69/DV/2020 pending before the Court of erstwhile Metropolitan Magistrate Court

at Bandra.

(b) Divorce petition filed by the Husband pending in Family Court at Bandra.

3. Applicant-husband is praying for transfer of Domestic violence proceedings from the Metropolitan Magistrate Court to the Family Court at Bandra. His learned Advocate made the following submissions:-

- (i) Common questions of the fact and law are involved in both the proceedings.
- (ii) In order to avoid conflict of orders, inquiry and trial by the same Court is required.
- (iii) The Applicant-husband is ready to clear arrears of maintenance as directed by way of interim measure by the Bandra Magistrate Court. **The maintenance passed by the trial Court and which was reduced by the Appellate Court.**
- (iv) The Respondent-wife is negligent in prosecuting Domestic violence proceeding. My attention is invited to the roznama of Domestic violence proceeding. It was filed in the year 2020.

But wife has taken four years to file affidavit of examination-in-chief and she has filed it only when trial Magistrate has given last chance on 15.07.2023 and 27.09.2023.

(v) The husband has filed an application for custody/access of the child before the Bandra Magistrate Court, and it can also be tried by the Bandra Family Court.

(vi) He placed reliance on observation in following two judgments:-

(a) *N.C.V. Aishwarya Vs. A. S. Servana Karthik Sha* decided by the Hon'ble Supreme Court in Civil Appeal No. 4894 of 2022, on 18.07.2022.

(b) *Dr. Ruchit Bharat Patel Vs. Dr. Tanvi Ruchit Patel and Ors.* decided by this Court in Misc. Civil Application No. 346 of 2024, on 27.09.2024.

(vii) He invited my attention to the averment in para nos. 5, 6 and 7 of the Divorce petition. It pertains to the cruelty allegations against the wife.

4. As against this learned Senior Advocate Shri Khandeparkar made

following submissions:-

- (i) In domestic violence proceedings evidence is already started and such transfer request ought to have been made earlier.
- (ii) The husband is not diligent in prosecuting divorce petition and yet it is not numbered. However on the basis of the roznamas, it can certainly be said that now it is numbered.
- (iii) According to him, the scope of Domestic violence proceeding is on the basis of the domestic violence. Whereas in a divorce proceeding when cruelty is ground even though foundational fact may be the same, the scope of the inquiry is different.
- (iv) He tried to differentiate the facts of those two judgments from the facts of this matter.

Consideration

5. It is true in the case of *N.C.V. Aishwarya (supra)*, the Hon'ble Supreme Court observed when common question of fact and law are involved and when the decisions are interdependent, it is always desirable to try them together by the same Judge to avoid multiplicity

in the trial. That was an application for transfer by the wife. It was rejected by the High Court. Whereas the Hon'ble Supreme Court allowed it. The proceeding filed by the husband before the Family Court at Chennai were transferred to the Family Court at Vellore. At Chennai, two proceedings filed by the wife were pending.

6. Whereas in case of *Dr. Ruchi Bharat Patel (supra)*, there were two proceedings initiated before the Family Court at Bandra. One by the wife and another by husband for custody. On the application of the husband, this Court has transferred the domestic violence proceeding from the Girgaon Magistrate Court to the Family Court Bandra.

7. Ultimately any observations made in any judgment is on the basis of peculiar facts of that case. No doubt in Divorce proceeding the foundational facts may be the same. In divorce petition, the husband is seeking for divorce on the ground of cruelty. No doubt burden is on husband to prove those allegations.

8. Whereas in domestic violence proceedings, the wife is alleging about the domestic violence at the instance of the Respondent therein. The burden is on the wife. If we consider the provisions of law in

respect of the reliefs, there are vast difference.

9. Furthermore as compared to domestic violence proceeding, the Divorce petition is substantial petition in which the Family Court is supposed to conduct detail inquiry. This cannot be expected in proceeding under the D.V. Act. It cannot be said that both the proceedings are interdependent because in case of *N.C.V. Aishwarya (supra)* one was the annulment petition and another was restitution petition. The result in one petition will certainly impact the outcome of the other petition. Both the petitions cannot be allowed. This cannot be said in respect of two proceedings involved in this transfer application.

10. The outcome of the decision in case of *Dr. Ruchi Bharat Patel (supra)* is on the basis of the facts of that case.

11. I am not inclined to accept the request for transfer. There is one more reason for refusing the request. Whether in time or belatedly the wife has filed an affidavit of examination-in-chief. Whereas the divorce proceeding, yet pleadings are not over. Domestic violence proceedings can be decided earlier to the divorce petition.

12. On the state of facts, it can only be said that both the Parties are at liberty to place reliance on the observations made by the Domestic violence Court in divorce petition.

13. Hence following Order :-

ORDER

- (i) With these observations, Misc. Civil Application is dismissed.
- (ii) The DV proceedings No. 69/DV/2020 pending before the 9th Metropolitan Magistrate's Court at Bandra be expedited, and it is to be decided as early as possible.
- (iii) The Applicant-husband it at liberty to request the Bandra Magistrate Court for exempting personal attendance and considering the stage, Bandra Court can take appropriate decision.

[S. M. MODAK, J.]