

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO.12 OF 2025

Pallavi Yogesh Kajale ...Applicant

vs.

Yogesh Jagdish Kajale ...Respondent

VISHAL
SUBHASH
PAREKAR

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VISHAL SUBHASH
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Ms. Priyanka Naik, for the Applicant.

Mr. Onkar Nagvekar i/b. Ms. Prabha Badadare, for the Respondent.

CORAM : N. J. JAMADAR, J.

DATE : FEBRUARY 28, 2025

P.C:

1. Heard the learned counsel for the parties.
2. Leave to amend so as to correct the number of proceeding in the prayer clause of the application.
3. Necessary amendment be carried out forthwith.
4. This is an application under section 24 of the Code of Civil Procedure, 1908 for transfer of Marriage Petition No. A-42 of 2023 from the Family Court at Thane to the Family Court at Nashik.
5. The marriage of the applicant was solemnized with the respondent on 30th August, 2023. They are blessed with a son, who is now ten years of age. In the wake of marital discord, the applicant is constrained to reside at her parental home at Nashik. The applicant has filed a petition for award of maintenance bearing No. E-02 of 2023 before the Family Court at Nashik. The applicant has

also filed proceeding under Protection of Women From Domestic Violence Act, 2005 before the Magistrate at Nashik, bearing DV Application No. 2 of 2025.

6. The respondent has in turn filed a petition for restitution of conjugal rights bearing Marriage Petition No. A-42 of 2023 before the Family Court at Thane.

7. The applicant has approached the Court for transfer of the said Marriage Petition No. A-42 of 2023 to the Court at Nashik asserting that she is dependent on her parents. She is required to take care of her ten year old son and she does not have the financial and logistical support to effectively defend the proceeding at Thane.

8. An affidavit in reply has been filed resisting the prayer for transfer.

9. The learned counsel for the respondent submitted that the application came to be filed after the Family Court at Thane had passed 'no written statement' order against the applicant. The respondent has also filed an affidavit in lieu of examination in chief. Subsequently, the applicant has filed application to set aside the no written statement order and to take the written statement on record. It was submitted that there is possibility of resolution of the dispute. Though the parties were earlier referred to mediation and the negotiations did not materialize, yet, there is a possibility of

settlement as the respondent is seeking restitution of conjugal rights.

10. Evidently, the applicant is residing at her parental home at Nashik. The applicant has to take care of her ten year old son. It appears that the applicant is dependent on her parents. Two proceedings filed by the applicant are subjudice before the Court at Nashik. In these circumstances, the applicant would suffer inconvenience and hardship if the matrimonial proceeding is tried before the Family Court at Thane.

11. It is trite law in the matter of transfer of matrimonial proceedings, the convenience of wife commands precedence. A profitable reference can be made to the following observations of the Supreme Court in the case of **N.C.V. Aishwarya Vs A.S. Saravana Karthik Sha**¹.

“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 wife’s convenience which must be looked at while considering transfer.

10. Further, when two or more proceedings are pending in different Courts between the same parties which raise common question of fact and law, and when the decisions in the cases are

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interdependent, it is desirable that they should be tried together by the same Judge so as to avoid multiplicity in trial of the same issues and conflict of decisions.”

12. The aforesaid enunciation of law governs the facts of the case in hand. Therefore, it would be expedient in the interest of justice that the Marriage Petition No. A-42 of 2023 is transferred to the Family Court at Nashik.

13. Since the learned counsel for the respondent submitted that there is an element of settlement, the learned Judge, Family Court at Nashik is requested to appoint a Mediator from the Panel of Mediators at the Family Court, Nashik to explore the possibility of a mediated settlement of the dispute before proceeding with the Marriage Petition.

Hence, the following order.

ORDER

1] Application stands allowed in terms of prayer clause (a).

2] Marriage Petition No.A-42 of 2023 stands transferred from the Family Court at Thane to the Family Court at Nashik for hearing and disposal in accordance with law.

3] The learned Judge, Family Court, Thane shall

transfer the record and proceedings in Marriage Petition No. A-42 of 2023 with such dispatch that it reaches the Family Court at Nashik within a period of four weeks from the date of communication of this order.

4] The learned Judge, Family Court, Nashik is requested to appoint a Mediator from the Panel of Mediators at the Family Court, Nashik to explore the possibility of mediated settlement before proceeding with the Marriage Petition, post its transfer.

Application disposed.

(N. J. JAMADAR, J.)