

MISC. CIVIL APPLICATION NO.80/2025

..APPLICANTS

ANAMIKA SUMANT JAIN

..RESPONDENT

Mr. Dushyant Purekar a/w. Mr. Rajat Dedhia for applicants.
Mr. Sushil Shukla i/b. Ms. Janki Sampat for respondent.

CORAM : RAJESH S. PATIL, J.

DATE : 13 OCTOBER 2025.

P.C. :

- 1.** This interim application has been filed by the applicant no.1, husband of the respondent seeking transfer of domestic violence proceedings pending before 26th Metropolitan Magistrate Court, Borivali to the Family Court at Bandra.
- 2.** After hearing the learned counsel for both parties, when this Court expressed its disinclination, Mr. Purekar, learned counsel for the applicant submitted that he has no instructions to withdraw the present application and the Court can pass order on merits.
- 3.** The applicant no.1- husband has filed the present transfer proceedings. He has also filed a divorce petition before the Family Court at Bandra wherein he has already filed his affidavit of evidence

and now the matter is kept for cross-examination to be conducted by the learned counsel for the respondent-wife. It is further submitted on behalf of the applicant that he is working as a sales executive with M/s. Ajit Power Solutions. The domestic violence proceeding has been filed before the Metropolitan Magistrate at Borivali so also a complaint under Section 498-A of the Indian Penal Code has been filed before the Metropolitan Magistrate Court at Borivali. In the interest of both the parties, the domestic violence proceeding should be clubbed with the divorce petition which is pending before the Family Court at Bandra.

4. Learned counsel appearing on behalf of the respondent-wife submitted that there is an order passed of interim maintenance to be paid of Rs.5000/-per month. However, till date, no amount has been paid and the arrears has gone upto to Rs.65,000/- as on date. The respondent-wife is staying with her parents at Borivali, Mumbai and she is a housewife. She has filed the domestic violence proceedings before the Metropolitan Magistrate Court at Borivali and also one proceeding under Section 498-A of the Indian Penal Code before the Metropolitan Magistrate Court at Borivali. In any case, even though for a minute it is presumed that the domestic violence proceedings are transferred to the Family Court at Bandra, Section 498-A

complaint under the Indian Penal Code could not be transferred to the Family Court at Bandra. The matter before the Family Court at Bandra i.e. the divorce proceedings has also reached to the evidence stage and the matter is now kept for cross-examination. Therefore, the application for transfer of the present proceeding has to be rejected.

5. Considering the law as laid down by the Supreme Court in the case of *N.C.V. Aishwarya Versus A.S. Saravana Karthik Sha*, reported in *2022 SCC OnLine SC 1199*, wherein the Supreme Court concludes that it is the convenience of the wife which has to be taken into consideration while dealing with the transfer proceeding. Paragraph 9 of the said decision reads as under:-

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.

(Emphasis supplied)

6. In the case of *Jyoti Abhijeet Kandage vs. Abhijeet Narayan*

Kandage (Misc. Civil Application No.239 of 2024), I have considered all the provisions as far as transfer proceedings are concerned. In paragraph No.15 and 15.2, it has been held as under :-

“15) Considering the Sections of D.V. Act, and the Judgments discussed in the above paragraphs, it becomes evident that Family Court has power to decide complaint which seeks relief under Sections 18 to 22 of the D.V. Act. Hence in my opinion, transfer of proceedings from Magistrate’s Court to Family Court pertaining to relief claimed under Section 18 to 22 of the D.V. Act can be allowed. However, if a transfer proceedings is not a bonafide one, then on merits such a transfer on case to case basis can be rejected. One has to also keep in mind the stage of the proceedings of which transfer is sought.

15.2) So also, one has to also keep in mind who is coming to the court for the transfer of the proceedings, whether it is the Wife or the Husband or any other party. Since a choice is given to the aggrieved person under the D.V. Act to choose the forum for reliefs sought under Section 18 to 22, (i.e.) before the Magistrate under Section 12 or to the civil court, family court or criminal court under Section 26, such transfer if sought by a Wife, considering the judgment of the Supreme Court in the case of N.C.V. Aishwarya (supra) will have to be considered favourably.”

7. Therefore, as per the judgment of the Supreme Court in the case of **N.C.V. Aishwarya** (supra), the convenience of the wife has taken into consideration. So also, as held by me in the judgment of **Jyoti Abhijeet Kandage** (supra), it is the respondent-wife who has the right to choose the forum. Apart from this fact, it is pertinent to note in the present proceeding that the arrears of Rs.65,000/- as of today and the divorce proceeding has reached to the stage of evidence where the applicant-husband has already filed his affidavit of evidence and the now the matter is kept for cross-examination.

Therefore, according to me, there is no merit in the present proceeding and the same is filed with ulterior motive, at a stage when in divorce proceeding, evidence has started. The applicant no.1 is in arrears of maintenance to be paid to wife.

8. Misc. Civil Application stands rejected with cost of Rs.25,000/- to be paid to the respondent-wife within a period of four weeks from today.

9. The Misc. Civil Application stands disposed of accordingly.

(Rajesh S. Patil, J.)