



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO. 88/2024

DIPA SAINATH SHETE
NEE DEEPALI YASHWANT SINARE ..APPLICANT
VS.
SAINATH DAGADU SHETE ..RESPONDENT

Mr. Raviraj Gamare for applicant.
Mr. Avinash Fatangare a/w. Ms. Archana Shelar for respondent.

CORAM : RAJESH S. PATIL, J.

DATE : 10 SEPTEMBER 2025.

ORAL JUDGMENT :

1. Mr. Gamare, learned counsel appearing for the applicant submits that this is a transfer application filed by the wife seeking transfer of the Hindu Marriage Petition No. 38 of 2024 filed by the husband from the Civil Judge, Senior Division, Sangamner, District Ahmednagar to the Family Court at Bandra, Mumbai.

1.1. He submitted that a proceeding under Section 125 of the Code of Criminal Procedure has been filed by the wife before the Judicial Magistrate First Class, Sangamner. He further submitted that the wife is ready to seek transfer of her proceeding from Sangamner to Mumbai.

1.2. He submits that the wife is working in the Police Department in Mumbai at L. T. Marg Police Station, and she is residing in Police Quarters at Ghakopar, Mumbai. The husband is staying at Dombivali, District Thane. It is not possible for the applicant to attend the hearing at Sangamner, Ahmednagar as she being in the Police Force it is difficult for her to take leave and go to Sangamner to attend the Court proceeding.

1.3. Earlier certain proceedings were filed by the husband at Sangamner, Ahmednagar. All those proceedings were disposed of by mutual consent as parties were trying to resolve their disputes. However, the present proceeding pending at Sangamner are to be contested on merits.

1.4. So also, she has to take care of her daughter who is studying in 6th Standard. There is nobody else to take care of her daughter as the mother of the present applicant is a senior citizen and it will not be possible for her to take care of the minor school going daughter of the applicant.

1.5. Distance between Mumbai and Sangamner, District Ahmednagar is roughly around 260 kms.

2. Mr. Fatangare, learned counsel for the respondent husband

submits that the conduct of the applicant – wife needs to be taken into consideration. She had earlier attended proceedings at Sangamner, Ahmednagar and in those proceedings, compromise was entered into. However, she did not comply with the conditions of the compromise, therefore, a fresh petition has been filed.

2.1. Mr. Fatangare further submitted that the respondent – husband is ready to bare the expenses of travel of wife from Mumbai to Sangamner. He relied upon the following three authorities in support of his contentions :-

- (i) ***Gayatri Mohapatra*** reported in ***(2003) 11 SCC 731*** ;
- (ii) ***Eluri Raji Reddy & Ors. Vs. State of Delhi & Anr.*** reported in ***(2004) 4 SCC 479*** ;
- (iii) ***Anindita Das Vs. Srijit Das***, reported in ***(2006) 9 SCC 197***.

3. I have heard learned counsel for both sides and I have gone through the entire proceedings.

4. The Supreme Court in the case of ***N.C.V. Aishwarya Versus A.S. Saravana Karthik Sha***, reported recently in ***2022 SCC OnLine SC 1199***, in Paragraph No.9 has held 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)

5. In the decision of ***N.C.V. Aishwarya*** (supra), the Supreme court was considering the fact where the wife was seeking transfer of proceeding filed by husband at Family Court, Vellore to Family Court at Chennai. The distance between Chennai to Vellore is around 140 kms. She is unemployed and does not have any source of income and she is morally and financially dependent upon her parents who are aged. The Supreme Court held that convenience of wife must be looked into while considering transfer of proceedings and accordingly allowed the transfer of proceedings to the place where the wife lives.

6. Therefore, preliminary while considering the transfer proceedings, the convenience of the wife has to be considered. In the present proceeding, the wife is working in Mumbai in the Police

Department. Her daughter is minor, aged 13 years and is studying. Her mother is senior citizen. Therefore, it would be difficult for her to attend the proceeding which is pending before the Sangamner Court which is 260 kms away from Mumbai. So also, it is pertinent to note that the respondent husband is also residing very near to Mumbai city in Thane District and is also working in Thane District.

7. As far as the decision of the Supreme Court in *Eluri Raji Reddy (supra)* is concerned, the said proceeding was of a transfer petitions filed by the husband and also by wife. The husband lived in Andhra Pradesh, the wife's parents lived in Andhra Pradesh. Wife's brother stayed in Delhi, hence she filed proceeding in Delhi under Section 125 of Cr.P.C. in which proceedings the husband and his parents were arrested. Supreme Court transferred the proceedings to Andhra Pradesh. Therefore, considering the facts of that case the order was passed, the said ratio would not be applicable to the present proceeding where the facts are quite different.

8. As far as the order of the Supreme Court in *Gayatri Mohapatra (supra)* is concerned, the petitioner – wife in the said proceeding was a Director in a company run by her mother, which also had branch office in Delhi, therefore the said petitioner – wife used to travel

regularly to Delhi for official and personal work. Hence, the Court was of the view that the transfer petition filed by the petitioner – wife to transfer proceedings filed by husband to Cuttack, Orissa, was not a valid ground, hence, was dismissed. Therefore, considering the fact of this order it can't be said that ratio has been laid down by the Supreme Court.

9. As regards the order passed in *Anindita Das* (supra), the Court was considering the facts of that case while passing order. The Court while passing order took into consideration that the ground stated by the wife for transfer, that her health is not good, but she didn't give any particulars. The Court considered that she has a child of 6 years, but there are grand parents to look after the child. In the said order, the Supreme Court has not laid down any law, or any straight jacket formula.

10. However, the Supreme Court in its latest judgment in *N.C.V Aishwarya* (supra), has clarified the position in Paragraph 9 which has been followed thereafter in many matters. Considering the law laid down by the Supreme Court in the recent judgment and the facts of the present proceeding according to me, a case is made out to allow the Misc. Civil Application.

11. The Misc. Civil Application is allowed in terms of prayer clause (a).

12. The Civil Judge, Senior Division, Samgamner, District Ahmednagar is directed to transfer the divorce proceedings viz. Hindu Marriage Petition No. 38 of 2024, within one month to Family Court at Bandra, Mumbai.

13. Parties to act on an authenticated copy of this judgment.

(Rajesh S. Patil, J.)