

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO. 146 OF 2024

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Neelam Abhijit Waghmode ...Applicant

VS.

Abhijeet Vasant Waghmode ...Respondent

Mr. Vijay Garud, for the Applicant.

Mr. Sangram Suryavanshi, for Respondent.

CORAM : N. J. JAMADAR, J.

DATE : JANUARY 17, 2025

P.C:

1. This is an application under section 24 of the Code of Civil Procedure, 1908 for transfer of the Marriage Petition No. A-1794 of 2023 from the file of learned Judge, Family Court, Pune to learned Civil Judge Senior Division, Barshi, Dist. Solapur.

2. The applicant is the wife of respondent. Their marriage was solemnized on 11th May, 2018. In the wake of discord, the applicant was allegedly subjected to matrimonial cruelty. The applicant lodged report being C.R. No. 126 of 2020 at Barshi City police station for the offences punishable under sections 498A, 323, 504 and 506 read with 34 of Indian Penal Code, 1860. The applicant was also constrained to file a proceeding under Protection of Women From Domestic Violence Act, 2005, being Cri. M.A. No. 434 of 2021. The respondent, on his part, has instituted a petition for dissolution

of marriage under section 13(1)(i-a)(i-b) of the Hindu Marriage Act, 1955 before the Family Court at Pune. The applicant has preferred this application for transfer of the said petition bearing No. A/1794 of 2023 to the Court of Civil Judge Senior Division at Barshi on the ground of inconvenience and hardship.

3. Mr. Suryawanshi, the learned counsel appointed to espouse the cause of the respondent, resisted the application for transfer. It was submitted that adequate transport facilities are available between Barshi and Pune and the applicant can be provided necessary traveling expenses. Thus, the proceeding need not be transferred.

4. It appears that in the wake of marital discord, the applicant is constrained to take shelter at her parental home at Alipur Road, Barshi. The applicant claims that she has no independent source of income. The distance between Barshi and Pune is about 250 km. The proceedings instituted by the applicant are subjudice before the Courts at Barshi and the respondent has been attending the said proceedings. In the totality of circumstances, the scale of inconvenience tilts in favour of the applicant.

5. Ordinarily, in the matter of transfer of the proceeding arising out of matrimonial dispute, the inconvenience of the wife commands preference. A useful reference in this context can be

made to the decision of the Supreme Court in case of **N.C.V.**

Aishwarya Vs A.S. Saravana Karthik Sha¹ in the following terms:

“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 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.”

6. In the case at hand, all the factors which ought to weigh with the Court in considering the prayer for transfer appear in favour of the applicant. Thus, it would be expedient in the interest of justice to transfer the proceeding from the Family Court at Pune to the Court of Civil Judge Senior Division at Barshi.

Hence, the following order.

ORDER

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

2] The Marriage Petition No. A-1794 of 2023 pending on the file of learned Judge, Family Court, Pune be transferred to the learned Civil Judge Senior Division, Barshi, Dist. Solapur for hearing and disposal in accordance with law.

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3] The learned Judge, Family Court, Pune shall transfer the record and proceedings in Marriage Petition No. A-1794 of 2003 with such dispatch that it reaches the Court of Civil Judge Senior Division, Barshi, Dist. Solapur within a period of four weeks from the date of communication of this order.

4] The Courts at Barshi seized with the proceedings between the applicant and the respondent are requested to keep all the proceedings on one date, as far as possible.

Application disposed.

(N. J. JAMADAR, J.)