

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISCELLANEOUS CIVIL APPLICATION NO. 183 OF 2024

Nilesh Parakh

..Applicant

Versus

Prachi Parakh Nee Prachi Sawant & ors.

..Respondents

Mr. Juzer Udaipuri a/w. Mr. Jitendra Kshirsagar, Mr. Harshad Kshirsagar, Ms. Anita Bhagat, Ms. Sharli Varsulkar, Mr. Firdaus Udaipuri i/b. Mr. Jitendra Kshirsagar, Advocates, for the Applicant

Mr. Sundeep Singh a/w. Mr. Mahendra Yadav, Ms. Mansi Singh, Ms. Pooja Pradhan & Mr. Sameer Gamare, Advocates, for the Respondents

CORAM : RAJESH S. PATIL, J.

DATE : 15.12.2025

P C.

1. By the present proceeding, the Applicant, who is the husband of Respondent No. 1 is seeking transfer of D. V. Complaint filed by Respondent No. 1 – wife before the learned Metropolitan Magistrate's 53rd Court, Mulund to the learned Family Court, Bandra, Mumbai.

2. It is the Applicant – husband's case that he has filed a divorce proceeding before the learned Family Court, Bandra, Mumbai and the D. V. proceeding filed by Respondent No. 1 – wife can be transferred to the learned Family Court, Bandra, Mumbai and heard together.

3. On behalf of Respondent No. 1 – wife, it is submitted that

ANAND
SUDHAKAR
SUDAME

Digitally signed
by ANAND
SUDHAKAR
SUDAME

Date:
2025.12.18
20:32:47 +0530

Respondent No. 1 – wife is staying with her five years old daughter in a flat in building where her parents are also staying in a separate flat. Now, her daughter is studying in Play School near by her residence and her parents are helping her to look after her daughter. She has also filed Section 498A of the IPC complaint before the local police station near her residence at Bhandup, Mumbai and Charge-sheet has been filed before the learned JMFC, 53rd Court, Mulund, Mumbai, where even D. V. complaint is pending. It is, therefore, submitted that in any case, 498A complaint will remain before the learned JMFC, 53rd Court, Mulund, Mumbai and the same cannot be transferred to the learned Family Court, Bandra, Mumbai. It is also submitted that in the D. V. complaint, the relief under Section 23 is also sought. As the view is taken by this Court in ***Jyoti Abhijeet Kandage*** (Supra), the D. V. proceeding cannot be transferred to the learned Family Court, Bandra, Mumbai.

4. I have already taken a view in ***Misc. Civil Application No. 239 of 2024 (Jyoti Abhijeet Kandage vs. Abhijeet Narayan Kandage & Ors.)*** that it has to be seen the D. V. Complaint seeks relief under which Section of the D. V. Act. Paragraphs 15, 15.1 and 15.2 read 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.

15.1) Section 26 of D.V. Act, refers to only reliefs sought under Section 18 to 22. Therefore, application/complaint seeking relief under any other section of D.V. Act viz. Section 31, etc. would not be maintainable before Family Court.

*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.*

(Emphasis supplied)

5. View taken by this Court was also further taken in the case of ***Amey Laxminarayan Pant vs. Devyani Harishchandra Tiwari in Misc. Civil Application No. 393 of 2025.*** However, considering facts of the present case, in the case of ***Amey Laxminarayan Pant*** (Supra), costs of Rs. 1,00,000/- was imposed on the Applicant. The said Applicant - ***Amey Laxminarayan Pant***, thereafter, carried the matter to the Supreme Court where the Supreme Court has issued notice and has stayed only the issue about directions given by this Court with costs of Rs. 1,00,000/-.

5.1 Therefore, as of today, there is no stay granted to the view taken by this Court in *Jyoti Abhijeet Kandage* (Supra) and many other such matters.

6. In view of the same, considering facts of the present case, there is no merit in the MCA filed by husband and it requires to be rejected.

7. Accordingly, the Miscellaneous Civil Application **stands rejected**.

(RAJESH S. PATIL, J.)