

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

MISC. CIVIL APPLICATION NO. 268 OF 2024

Srushti Harshad Gaikwad ...Applicant

Versus

Harshad Vilas Gaikwad ...Respondent

Mr. Gaurav Kalekar, for the Applicant.

Mr. Chintan Tamhane, through VC, for the Respondent.

CORAM: N. J. JAMADAR, J.

DATED : 3rd JANUARY, 2025

ORDER:-

1. This is an application under Section 24 of the Code of Civil Procedure, 1908 for transfer of Marriage Petition No.19 of 2024 filed by the respondent in the Court of Civil Judge, Senior Division, Vadgaon-Maval, District Pune, to the Court of Civil Judge, Senior Division at Vaduj, District Satara.

2. The marriage of the applicant with the respondent was solemnized on 13th December, 2021. The applicant and respondent were blessed with a son on 27th September, 2022. In the wake of marital discord, the applicant started to reside at her parental home at Vakeshwar, Taluka Khatav, District Satara alongwith her son. The applicant has preferred a proceeding under the Protection of Women from Domestic Violence Act,

2005 being Application No.29 of 2024 in the Court of Judicial Magistrate, First Class, Vaduj. The respondent, on his part, has filed a petition for restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955 being HMP/19/2024.

3. The applicant has preferred this application asserting *inter alia* that the distance between the applicant's parental village Vakeshwar and Vadgaon Maval is around 200 kms. The applicant has no independent source of income. There is an apprehension of safety of the applicant if she were to attend the proceedings at Vadgaon – Maval.

4. An affidavit-in-reply is filed on behalf of the respondent.

5. The learned Counsel for the applicant submitted that as two proceedings are subjudice before the Courts at Vaduj, it would, be in the interest of justice that the instant marriage petition is also transferred to the Court at Vaduj.

6. Mr. Tamhane, the learned Counsel for the respondent, submitted that the respondent on his own has been remitting a sum of Rs.2,000/- per month to the applicant, to facilitate her travel to the Court at Vadgaon-Maval. The mother of the respondent is suffering from ailments. She is completely dependent upon the applicant. In the event, the HMP is

transferred to the Court at Vaduj, the respondent would suffer grave prejudice.

7. Incontrovertibly the applicant is residing at Vakeshwar, Taluka Vaduj. The applicant has instituted the proceedings before the Courts at Vaduj. A two year old son of the applicant resides with the applicant. The distance between the place of the residence of the applicant and the Court at Vadgaon-Maval is, in a sense, prohibitive. *Prima facie* it appears that it would entail extreme inconvenience and hardship to the applicant if HMP/19/2024 is tried in the Court of Civil Judge, Senior Division, Vadgaon-Maval.

8. A useful reference, in this context, can be made to a decision of the Supreme Court in the case of ***N.C.V. Aishwarya vs. A. S. Saravana Kartihk Sha¹***, wherein the factors which should weigh in, in deciding the prayers for transfer of the proceedings arising out of matrimonial disputes, were succinctly enunciated 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

1 2022 SCC Online SC 1199.

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."

9. In totality of the circumstances, the elements of inconvenience and hardship tilt in favour of the applicant. If the trial of HMP/19/2024 is conducted at Vadgaon-Maval, the applicant is likely to suffer prejudice and may not be in a position to effectively defend the said proceedings. It would therefore be expedient in the interest of justice to transfer the proceedings from the Court of Civil Judge, Senior Division, Vadgaon-Maval, District Pune, to the Court of Civil Judge, Senior Division at Vaduj, District Satara.

10. I am, therefore, inclined to allow the application.

11. Hence, the following order:

: O R D E R :

- (i) The application stands allowed in terms of prayer clause (a).
- (ii) HMP/19/2024 pending on the file of the learned Civil Judge, Senior Division, at Vadgaon-Maval, District Pune, stands transferred to the Court of Civil Judge, Senior

Division at Vaduj, District Satara, for hearing and disposal in accordance with law.

- (iii) The learned Civil Judge, Senior Division, at Vadgaon-Maval, District Pune, shall transfer the record and proceedings in HMP/19/2024 to the Court of Civil Judge, Senior Division at Vaduj, District Satara within a period of four weeks from the date of communication of this order.
- (iv) The applicant shall render necessary co-operation in keeping all the proceedings between the parties before the Courts at Vaduj, on the same date, as far as possible.
- (v) Application disposed.

No costs.

[N. J. JAMADAR, J.]