

Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO. 308 OF 2024

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Date: 2025.02.25
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Bhagyashree Pramod Patel

...Applicant

Versus

Sumit Tukaram Patil

...Respondent

Mr. Abhijeet Joshi, i/b Varsha Sawant, for the Applicant.

Mr. Yogen Kakade, through VC, a/w Himanshu Patil and
Sarvesh Sonar, for the Respondent.

CORAM: N. J. JAMADAR, J.

DATED : 3rd JANUARY, 2025

ORDER:-

1. The applicant – wife has preferred this application seeking transfer of HMP/A2125/2023, filed by her husband for decree of dissolution of marriage under Section 13 of the Hindu Marriage Act, 1955, pending on the file of the Family Court at Pune, District Pune to the Family Court at Aurangabad.
2. The marriage of the applicant with the respondent was solemnized on 16th February, 2020. The applicant and respondent both are qualified professionals. They both moved to United States of America (USA). Both were working in USA.
3. In the wake of the marital discord the applicant and the respondent returned to India. They started residing separately. Eventually, the respondent filed petition for dissolution of

marriage being HMP/A2125/2023 before the Family Court at Pune.

4. The applicant has preferred this application asserting, *inter alia*, that no part of cause of action arose at Pune. The applicant is residing at Aurangabad alongwith her sick mother. Her father has passed away. The applicant is working from home for a foreign company. The distance between Pune and Aurangabad is more than 250 kms. The continuation of the proceedings at Pune would cause inconvenience and extreme hardship to the applicant.

5. An affidavit-in-reply is filed on behalf of the respondent controverting the contentions in the application. It is, *inter alia*, contended that the applicant has not made out any ground to seek the transfer of the proceedings from the Family Court at Pune to the Family Court at Aurangabad. This application has been filed with the sole intent to take an undue advantage of the fact that the applicant is a woman. There is no other justifiable reason.

6. I have heard Mr. Joshi, the learned Counsel for the applicant and Mr. Kakade, the learned Counsel for the respondent, at some length.

7. Mr. Kakade, the learned Counsel for the respondent, submitted with tenacity that the applicant has appeared before the Family Court at Pune and appointed an Advocate to defend her. Written statement has been filed in the said petition. The petition is now ripe for recording evidence. Transfer of the proceedings, at this stage, from the Family Court at Pune to the Family Court at Aurangabad would derail the proceedings. Moreover, the applicant being a working professional, no element of prejudice is likely to be caused to the applicant if the proceedings are continued at Pune.

8. It can not be controverted that the applicant resides at Aurangabad. Nor the attendant circumstances can be lost sight of. The applicant's father has passed away. The applicant claims that her ailing mother stays with her. The distance between Aurangabad and Pune is, in a sense, prohibitive. The applicant would be put to inconvenience and expenses, in attending the proceedings at Pune.

9. It is trite that in a matrimonial matter, like the present one, ordinarily, it is the inconvenience of the wife which commands precedence.

10. 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 Sha*¹, 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 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.”

11. The elements of inconvenience and hardship tilt in favour of the applicant. The apprehension on the part of the respondent that the disposal of the proceedings would be delayed if the proceedings are transferred from the Family Court at Pune to the Family Court at Aurangabad can be taken care of by putting the applicant to terms.

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

13. Hence, the following order:

: O R D E R :

- (i) The application stands allowed in terms of prayer clause (a).

1 2022 SCC Online SC 1199.

- (ii) HMP/A2125/2023 pending on the file of the Family Court at Pune, stands transferred to the Family Court at Aurangabad, for hearing and disposal in accordance with law.
 - (iii) The learned Judge, Family Court at Pune, shall transfer the record and proceedings in HMP/A2125/2023 to the Family Court at Aurangabad within a period of four weeks from the date of communication of this order.
 - (iii)(a) The parties shall co-operate with the learned Judge, Family Court at Aurangabad, for expeditious disposal of the proceeding and shall not seek unnecessary adjournments.
 - (iv) Application stands disposed.
- No costs.

[N. J. JAMADAR, J.]