

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
MISCELLANEOUS CIVIL APPLICATION NO. 366 OF 2024

Neelam Jaykishan Notani	...Applicant
Versus	
Jaykishan Premchand Notani	...Respondent

Mr. Amol B. Jagtap, for the Applicant.
Mr. Shyam Dewani, with Sachet Makhija and Pashang Doshi, for the Respondent.

CORAM: N. J. JAMADAR, J.
DATE: 10 JANUARY 2025

ORDER:-

1. This is an Application under Section 24 of the Code of Civil Procedure 1908 (“the Code”), to transfer HMP No. 221 of 2022 pending on the file of Civil Judge, Senior Division, Khamgaon, to the Family Court at Pune.

2. The marriage between the Applicant-wife was solemnized with the Respondent-husband on 21st November 2017. They were blessed with a daughter on 11th October 2020. Even before the daughter was born, there was marital discord between the parties resulting in separation since the month of May 2020.

3. The Applicant lodged FIR No. 0162 of 2021 at Wakad Police Station, Pimpri Chinchwad, for the offences punishable under Sections 498A, 504 and 506 read with Section 34 of the Indian Penal Code 1860

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(“the Penal Code”) culminating in a Regular Criminal Case. The Applicant has also instituted a proceeding under the provisions of Protection of Women from Domestic Violence Act, 2005 (“the DV Act”), before the Judicial Magistrate, First Class, Pune, bearing Criminal MA No. A-1188 of 2021. Interim orders are passed in the said proceeding. The Respondent has preferred two appeals which are subjudice before the Court of Sessions at Pune. The Respondent, in turn, initially filed a Petition for dissolution of marriage under Section 13(1) (ia) and (ib) of the Hindu Marriage Act 1955, in the Court of Civil Judge, Senior Division, Khamgaon and, later on, by way of amendment, converted the same into a Petition for restitution of conjugal rights under Section 9 of the Hindu Marriage Act.

4. The Applicant has thus preferred this Application for transfer of the said HMP No. 221 of 2022 from the Court of CJSD, Khamgaon to the Family Court at Pune as after marriage the parties were residing at Pune, the Respondent was working at Pune and still works at Pune. And yet with a view to harass the Applicant, the Respondent has instituted the matrimonial proceeding before the Civil Court at Khamgaon, which is at a distance of 530 km from the residence of the Applicant. The Applicant is at the mercy of her family. She has to take care of her minor daughter. Thus, continuation of the proceedings at Khamgaon, would cause extreme inconvenience and hardship to the Applicant.

5. The Respondent resisted the Application by filing an Affidavit in Reply. In substance the resistance of the Respondent is that, no justifiable ground for transfer of the proceeding from the jurisdictional court to the Family Court at Pune, is made out. The Applicant has suppressed the material facts. The Applicant is gainfully employed at Pune. There are family members of the Applicant who can take due care of the Applicant's daughter. The Applicant has sufficient means to travel to Khamgaon. Moreover, the witnesses are all based at Khamgaon and, in the event the proceedings are transferred to the Family Court at Pune, the witnesses would be put to grave inconvenience.

6. Mr Jagtap, the learned Counsel for the Applicant, submitted that in fact, both the Applicant and the Respondent are residing at Pune. The Respondent works at Pune. Institution of the matrimonial proceeding before the CJSD, Khamgaon, was with an oblique motive to bring the Applicant to terms. Therefore, the proceeding deserves to be transferred to the Family Court at Pune. Lest, the Applicant, who is in a state of destitution, would suffer great prejudice and she would not be in a position to effectively defend the matrimonial proceeding.

7. Mr. Dewani, the learned Counsel for the Respondent, submitted that the fact that the Applicant has been gainfully employed and currently works with Transperfect Solutions Private Limited at Pune, singularly dismantles her claim for transfer. Mr. Dewani further

submitted that the Applicant has the means and capacity to travel to Khamgaon. In the matter of transfer of the proceedings, according to Mr. Dewani, the convenience of the witnesses also matters. In the event, the proceedings are transferred to the Family Court, Pune, the witnesses would suffer greater inconvenience.

8. Mr. Dewani, lastly submitted that it is not an immutable rule of law that whenever a women seeks the transfer of the matrimonial proceeding, the prayer be allowed as a matter of course. Reliance was sought to be placed on the orders passed by the Supreme Court in the cases of **Teena Chhabra Vs Manish Chhabra**,¹ **Priti Sharma Vs Mangit Sharma**,² **Reema Sethi Vs Deepak Sethi**³ and **Anindita Das Vs Sirjit Das**⁴ wherein the Supreme Court declined to transfer the proceedings at the instance of wife.

9. To start with, it cannot be controverted that the Applicant resides at Pune. Indisputably, four year old daughter of the Applicant stays with her. There is material to indicate that the Applicant had instituted proceedings before the Courts at Pune. The Respondent has appeared therein and even filed Appeals against the orders passed by the learned Magistrate. There is *prima facie* material to show that the residence of the Respondent also, is at Pune. Even if, the fact that the ordinary

1 (2004) 13 SCC 411.

2 (2005) 11 SCC 535.

3 (2005) 11 SCC 568,

4 (2006) 9 SCC 197.

residence of the Respondent at Pune is put in contest, yet in the light of the considerations which ought to weigh with the Court in transferring the matrimonial proceedings, the prayer for transfer deserves to be acceded to.

10. It is true that, in the cases of **Teena Chhabra** (Supra), **Priti Sharma** (Supra), **Reema Sethi** (Supra) and **Anindita Das** (Supra), the Supreme Court declined to transfer the proceedings at the instance of the wife where the husband agreed to pay the travelling expenses of the wife, in the peculiar facts of those cases. However, in the very nature of things, the question as to whether a particular proceeding be transferred to one Court from another, is rooted in facts. A decision in one case may not be readily imported to the facts of another case.

11. The considerations that should weigh with the court in the matter of transfer of the matrimonial proceedings were considered by the Supreme Court in the case of **N.C.V. Aishwarya Vs A.S. Saravana Karthik Sha**⁵ 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.

12. On the aforesaid touchstone, reverting to the facts of the case, the Court finds that all the factors which bear upon the question of transfer, present themselves in the instant case as well. The Applicant is residing with her parental relatives at Pune. The Applicant has to look after her small daughter. The distance between Pune and Khamgaon is prohibitive. Even discounting the element of the means of the Applicant, the distance is such that the Applicant would be put to great inconvenience and expenses if she were to travel to Khamgaon from Pune. Thus, the point of relative inconvenience tilts in favour of the Applicant. As noted above there are other proceedings between the parties which are pending before the Courts at Pune.

13. The submission of Mr. Dewani that the transfer would entail inconvenience to the witnesses, though cannot be brushed aside

completely, yet, does not advance the cause of the submission on behalf of the Respondent. Since the proceeding has been converted into one for restitution of conjugal rights, the number of witnesses which the parties may be required to be examine in such proceeding may not be large.

14. In the totality of circumstances, in my view, it would be expedient in the interest of justice to transfer HMP No. 221 of 2022 from the Court of CJSD, Khamgaon to the Family Court at Pune.

15. Hence the following order:

O R D E R

- (i) The Application stands allowed.
- (ii) HMP No. 221 of 2022 pending on the file of CJSD, Khamgaon, stands transferred to the Family Court, Pune.
- (iii) The learned CJSD, Khamgaon, shall transfer the record and proceedings in HMP No. 221 of 2022 with such dispatch that it reaches the Family Court at Pune, within period of four weeks from the date of communication of this order.
- (iv) Application disposed.

[N. J. JAMADAR, J.]