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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISCELLANEOUS CIVIL APPLICATION NO. 369 OF 2024

Shankar Laxman Khilari

...Applicant

Versus

Shital Shankar Khilari

...Respondent

None, for the Applicant.

Mr. Prashant Nayak, for the Respondent.

CORAM: N. J. JAMADAR, J.

DATE: 10th JANUARY 2025

ORDER:-

1. By this Application under Section 24 of the Code of Civil Procedure 1908 ("the Code"), the Applicant-husband seeks transfer of the proceedings, i.e., HMP No. 1196 of 2023 pending on the file of Civil Judge, Senior Division, Kalyan and Criminal Miscellaneous Civil Application No. 402 of 2024 pending on the file of Judicial Magistrate, First Class, Panvel to the Court of Civil Judge, Senior Division at Panvel.

2. The marriage of the Applicant was solemnized with the Respondent on 3rd June 2017. In the wake of marital discord, the Applicant has instituted a Petition for dissolution of marriage under Section 13(1) (ia) and (ib) of the Hindu Marriage Act 1955 before the Court of CJSD, Kalyan. The Respondent-wife has, in turn, filed a proceedings under Protection of Women from Domestic Violence Act,

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2005 (“the DV Act”) being Criminal MA No. 402 of 2024 before the JMFC, Panvel.

3. In the Application, it is asserted that the Applicant and his relatives reside at Dombivali. Trial of Criminal MA No. 402 of 2024 at Panvel, causes extreme inconvenience and hardship to the Applicant. Thus, initially the Applicant sought transfer of Criminal MA No. 402 of 2024 only to the Court of CJSD, Kalyan, where the Applicant has instituted above-numbered Petition for dissolution of marriage.

4. On 18th October 2024 this Court expressed its disinclination to transfer the proceeding under the DV Act to the Court of CJSD, Kalyan. Thereupon, the Applicant amended the Application and sought transfer of both the proceedings, i.e., HMP No. 1196 of 2023 and Criminal MA No. 402 of 2023 to the Court of CJSD, Panvel.

5. On 3rd January 2025, this Court had heard Mr. Laxman Kalel, learned Counsel for the Applicant and Mr. Prashant Nayak, learned Counsel appointed to espouse the cause of the Respondent, at some length. The matter came to be posted as Mr. Kalel had sought time to take instructions on the aspect of the transfer of HMP only to the Court of CJSD, Panvel. Today, Mr. Kalel did not appear despite repeated calls.

6. Evidently, the Respondent-wife is residing at Panvel along with her parents. The Respondent appears to be dependent upon her parents. It is not the case that the Respondent has the means to sustain herself

and effectively defend the proceeding instituted by the Applicant for dissolution of marriage. The principles which governs the exercise of power under Section 24 of the Code, especially in the matters arising out of matrimonial proceedings, were expounded by the Supreme Court in the case of **N.C.V. Aishwarya Vs A.S. Saravana Karthik Sha**¹ 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.

¹ 2022 LiveLaw (SC) 627

7. The elements adverted to by the Supreme Court, in the aforesaid judgment, which ought to weigh with the Court in the matter of transfer of matrimonial proceedings, obtain in the case at hand as well. The continuation of the proceeding for dissolution of marriage before the Court of CJSD, Kalayn, is likely to put the Respondent-wife to extreme inconvenience and hardship and has the propensity to impair her capacity to effectively defend the said proceeding. In any event, the Applicant himself has prayed for the transfer of the said proceeding to the Court of CJSD, Panvel.

8. So far as the transfer of Criminal MA No. 402 of 2024, in my view, different considerations came into play. Undoubtedly, the proceeding under the DV Act can also be transferred to the Family Court in view of the provisions contained in Section 7(2(b)) of the Family Courts Act 1984 read with Section 26 of DV Act. However, the transfer of the proceeding under the DV Act from the Court of JMFC to other Courts cannot be as a matter of course. The Supreme Court has cautioned against the transfer of the proceeding in a routine manner. In the case of **Anuraag Agarwal Vs Poonam Agarwal nee Mukim**² on which reliance was placed by Mr. Prashat Nayak, a learned Single Judge after adverting to the previous pronouncements including the order passed by the Supreme Court in the case of **Mohammed Danish Abdul Wahab**

2 2024 SCC OnLine Bom 2105.

Vs Farjana Mohammed Danish,³ declined to transfer the proceeding under the DV Act to the Family Court.

9. The observations in paragraph 15 of the said judgment are material and hence extracted below.

“15. If conflict of judgment on same facts and between the same parties is the sole ground of transfer, every transfer petition filed by the husband will have to be allowed by this Court making the choice of wife to approach the Magistrate meaningless. The choice available to the wife file application either under section 12 or under Section 26 of the D.V. Act would be rendered nugatory. In the Application under Section 12, the Magistrate is required to make an endure to decide it in 60 days, whereas is a transfer petition is entertained by this Court it consume substantial time rendering the mandate of Section 12 of expeditious disposal nugatory.”

10. It is true that the Judicial Officer who presides over the Court of CJSD is also invested with the powers of a Magistrate. However, having regard to the objects and provisions contained in DV Act, the emphasis on the timeline for the disposal of the cases thereunder and the challenges in the enforcement of the orders passed under the said Act, it may not be expedient in the interest of justice to transfer Criminal MA No. 402 of 2024 pending on the file of JMFC, Panvel to the Court of CJSD, Panvel. At any rate, since both the proceedings would be conducted at the same station, the Applicant would not suffer any prejudice. The concern of the the Applicant can be mitigated by

requesting the Courts at Panvel to post both the proceedings on the same day, as far as possible.

11. Hence the following order:

O R D E R

- (i) The Application stands partly allowed.
- (ii) HMP No. 1196 of 2023 pending on the file of CJSD, Kalyan, stands transferred to the Court of CJSD, Panvel.
- (iii) The learned CJSD, Kalyan, shall transfer the record and proceedings in HMP No. 1196 of 2023 with such dispatch that it reaches the Court of CJSD, Panvel, within a period of four weeks from the date of communication of this order.
- (iv) The prayer to transfer Criminal MA No. 402 of 2024 stands rejected.
- (v) The learned CJSD, Panvel and learned JMFC, Panvel are requested to post both the proceedings on the same day, as far as possible.
- (vi) Application disposed.
- (vii) No costs.

[N. J. JAMADAR, J.]