

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
MISC. CIVIL APPLICATION NO.417 OF 2024**

Natalia Sachin Suri ... Applicant  
versus  
Sachin Sushil Suri ... Respondent

Ms. Zainba Abdi with Ms. Gayatri Gokhale, for Applicant.  
Mr. Randhir Singh i/by Ms. Shreya Shrivastava, for Respondent.

**CORAM: N.J.JAMADAR, J.**

**DATE : 25 APRIL 2025**

**P.C.**

1. This is an application for transfer of a proceeding under the Protection of Women from Domestic Violence Act, 2005 (the DV Act, 2005), being CC No.232/DV/2019, from the Court of Magistrate, Andheri to the Family Court, Bandra, Mumbai.
2. The marriage of the applicant was solemnized with the Respondent on 11 January 2002. They are blessed with a son. The Respondent allegedly subjected the applicant to harassment and physical cruelty. On 22 July 2019, on account of unbearable cruelty, the applicant was constrained to file the proceeding being CC No.232/DV/2019 in the Court of Metropolitan Magistrate, Andheri under Section 12 of the DV Act, 2005, seeking reliefs under Sections 18 and 23 of the Act, 2005. Interim orders have been passed in the said proceeding.
3. The Respondent, on his part, filed a Petition for dissolution of marriage

under Section 13(1)(i)(a) of the Hindu Marriage Act, 1955, being Petition No.A-2141 of 2019. In the said Petition as well, order of interim alimony has been passed. Both the proceedings are at the stage of recording of evidence. Hence, this application seeking transfer of the proceedings under the DV Act, 2005 to the Family Court at Bandra.

4. An affidavit in reply has been filed on behalf of the Respondent. Respondent has resisted the prayer for transfer. It is, inter alia, contended that the provisions contained in Section 26 of the DV Act, 2005 do not mandate the transfer of the proceeding from the Court of Magistrate to the Family Court. In fact, the Respondent would suffer prejudice as the order passed by the learned Magistrate under the DV Act, 2005, is appealable before the Sessions Court and, whereas, the order passed by the Family Court is appealable before the High Court. Moreover, the issues that arise for determination in the proceeding under the DV Act, 2005 and the Petition for divorce are totally different. Therefore, the application which has been preferred to delay the disposal of the proceedings does not deserve to be allowed.

5. I have heard Ms. Zainba Abdi, learned Counsel for the Applicant, and Mr. Randhir Singh, learned Counsel for the Respondent, at some length.

6. Ms. Abdi, learned Counsel for the Applicant, submitted that, the provisions contained in Section 26 of the DV Act, 2005 empower the Family

Court to deal with a proceeding under the DV Act, 2005. Thus, the challenge to the application on the basis of the jurisdictional competence of the Family Court is wholly untenable. To buttress this submission, learned Counsel for the Applicant placed reliance on a judgment of this Court in the case of Rohan Shah V/s. Nishigandha Shah<sup>1</sup>, and the orders passed in the cases of Sanket Sanjeev Khanolkar V/s. Surabhi Sanket Khanolkar<sup>2</sup> and Vijay Suryakant Kakade V/s. Anushka Vijay Kakade and Ors.<sup>3</sup>.

7. On the merits of the matter, Ms. Abdi submitted that since both the proceedings are at the stage of recording of evidence, it would be expedient that both the proceedings are heard and decided by the same Court, lest there would be possibility of conflicting decisions. Moreover, the parties would be saved of the time and expenses in prosecuting two proceedings before two different courts in which identical questions arise for determination.

8. Mr. Randhir Singh, learned Counsel for the Respondent, would, on the other hand, urge that the application has been preferred with intent to delay the disposal of the proceedings. The Respondent is willing to proceed with each of the proceedings before the jurisdictional Courts. Instead of adducing evidence in the DV proceeding, the applicant has preferred this application to transfer the proceeding so that neither of the proceedings progresses to culmination. Without contesting that the Family Court may try a proceeding

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1 MCA No.477 of 2022 dated 20 December 2023

2 MCA(ST) No.5825 of 2020 dated 15 February 2021

3 MCA No.498 of 2022 dated 2 February 2023

under the DV Act, 2005, Mr. Singh would urge that the said course is not warranted in every case. Reliance was placed on a judgment of this Court in the case of Anuraag Agarwal V/s. Poonam Agarwal nee Mukim<sup>4</sup> and a judgment of the Delhi High Court in the case of Aseem Khanna V/s. Akanksha Dua<sup>5</sup>.

9. I have given careful consideration to the material on record and the submissions canvassed across the bar. On the aspect of the jurisdiction of the Family Court to try the proceeding under DV Act, 2005, in view of the decisions of this Court in the cases of Rohan Shah (supra) and Vijay Suryakant Kakade (supra), on which reliance was placed by the learned Counsel for the Applicant, the Court need not delve on the jurisdictional competence of the Family Court to entertain, try and decide a proceeding under the DV Act, 2005. However, it is the aspect of expediency of such transfer of DV Case to the Family Court that warrants consideration.

10. From the perusal of the material on record, it appears that the applicant filed the proceeding under DV Act, 2005, being CC No.232/DV/2019, in the month of July 2019. The Respondent, in turn, had filed a Petition for dissolution of marriage, under the few days of the filing of the proceeding under the DV Act, 2005, by the applicant. The averments in the instant application further indicate that the applicant alleges that certain orders of

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4 MCA No.159 of 2023 dated 9 July 2024

5 2024 ALL MR (Cri) Journal 162

maintenance / monetary relief passed by the learned Magistrate as well as the Learned Judge, Family Court, have not been complied with. The reason assigned in the application for transfer of the proceeding is primarily that the trial of both the proceedings before the same Court would avoid unnecessary duplication and save time and costs.

11. The fact that the application came to be filed after about five years of the filing of the proceedings before the jurisdictional Court, is required to be taken into account. Since on the own showing of the applicant, the Respondent has committed defaults in payments of the maintenance / monetary relief granted in the proceeding under the DV Act, 2005, under Section 31 of the said Act, breach of a protection order / interim protection order by the Respondent is an offence punishable with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both. Sub-section (2) of Section 31 provides that offence under sub-Section (1) shall as far as practicable be tried by the Magistrate who has passed the order, the breach of which has been alleged to have been caused by the accused.

12. It would be contextually relevant to note that under Section 12(5) of the DV Act, 2005, the Magistrate shall endeavour to dispose of every application made under sub-Section (1) within a period of sixty days from the date of its first hearing. The legislative object behind prescribing time frame for

concluding DV proceedings and providing mechanism for enforcement of the orders passed under the DV Act, 2005, at the pain of prosecution, would be defeated if the proceedings under the DV Act, 2005 are not expeditiously concluded.

13. Where it is alleged that the Respondent has not complied with any protection or interim protection order passed by the Magistrate, in the view of this Court, the Magistrate is better equipped to deal with the proceeding under the DV Act, 2005. Where there is large pendency of the cases before the Family Court, the transfer of the proceeding under the DV Act, 2005 to the Family Court may further delay the disposal of the proceeding under the DV Act, 2005, which are required to be determined in a time frame.

14. Lastly, it cannot be said that the issues which may arise for determination in a Petition for dissolution of marriage and the proceeding under the DV Act, 2005 would be identical, though some overlapping is inevitable. Ordinarily, in the matter of transfer of matrimonial proceedings, it is the convenience of the wife that commands preference. However, in the case at hand, since the parties are residing at Mumbai, the aspect of relative inconvenience pales in significance.

15. For the foregoing reasons, in my considered view, it would be expedient that both the proceedings are decided by the jurisdictional Courts in an expeditious manner. Therefore, I am not inclined to transfer DV proceeding

from the court of the learned Magistrate and transfer the same to the Family Court at Bandra.

16. Hence, the Civil Misc. Application stands rejected.

17. No costs.

**( N.J.JAMADAR, J. )**