

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

MISCELLANEOUS CIVIL APPLICATION NO.423 OF 2024

SHARADA
RANGNATH
WAHULE

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Date: 2025.09.24
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Srikant Shyamanand Chaturvedi)
Aged: 46 years, Occupation: Service)
Indian Inhabitant, residing at 2109,)
Cosmopolis Shinagawa, 3-6-21, Konana)
Minato-Ku, Tokyo, 108-0075, Japan) ...Applicant

V/s.

Dr. Roopali Chaturvedi)
Aged:42 years, Occupation: Dentist,)
Indian Inhabitant, residing at A/12, Sea)
Pearl Apt.,)
J. P. Road, 7 Bungalows, Versova,)
Andheri (West), Mumbai – 400 061) ... Respondent

Ms. Pooja Jalan, for the Applicant.
Mr. Reshant Shah i/b Lex Conseiller for the Respondent.

CORAM : RAJESH S. PATIL, J.

DATED : 18th September 2025

JUDGMENT

1. This transfer application has been filed by the Husband of Respondent-Wife, seeking transfer of Domestic Violence complaint filed by the wife before the Metropolitan Magistrate 44th Court at Andheri, Mumbai, to Family Court at Bandra, Mumbai.

2. After hearing learned Advocate for the Applicants at length

and after perusing the entire documents on record, when this Court was not inclined to grant any relief as prayed for, the Advocate for Applicant, still went on arguing the matter. Thereafter this Court warned her that if the argument still continued further, cost will be imposed upon her client. Still the Advocate for the Applicant continued with her submissions.

3. The facts in summary. It is the case of the Applicant that two petitions, between the Applicant and the Respondent, are pending before the Family Court at Bandra. One petition filed by the Applicant-Husband for divorce and custody and the other petition being filed by the Applicant for a declaration with regard to the matrimonial home.

3.1 Thus, by the present transfer application it is prayed that the Domestic Violence complaint filed by the wife which is pending before the Metropolitan Magistrate at Andheri be transferred to Family Court at Bandra.

4. It is submitted on behalf of the Applicant that in order to avoid two conflicting judgments in two different proceedings between the same parties, the matter be clubbed together. So also, there will not be any prejudice to the Respondent-Wife if the matters are clubbed together.

4.1 As against this argument it is the Respondent's case that she is opposing the transfer application. It is submitted that Respondent is staying with their daughter and the Applicant-Husband is staying in Japan. Further more even the present transfer application has been affirmed in Japan. Therefore it does

not make much difference to the Applicant.

5. I have heard counsel for both the sides. There is no dispute about the fact that the present transfer application has been affirmed in Japan and the fact that the Applicant is staying in Japan and working in Japan. The Respondent / Wife is staying with the daughter in Andheri Mumbai. Maintenance Application has been preferred by the Respondent-Wife which is pending for hearing and as of date the Applicant-Husband has not paid any amount towards the maintenance.

6. As per the provision of Section 12 of The Protection of Women from Domestic Violence Act, 2005 (hereafter referred as “D.V. Act”) the wife can file proceeding seeking relief under Section 18 to 22 before the Magistrate Court. So also option is given to the wife to file proceedings for seeking similar relief before the Civil Court, Family Court or a Criminal Court. There is no doubt that a husband does not have a right to file such proceedings before a Magistrate Court or a Family Court. Therefore the option is only to the wife being an aggrieved party to choose her forum.

7. In the present proceedings, the Applicant-Husband is in Japan and the daughter born out of the wedlock of Applicant and Respondent is residing with Respondent-Wife. There is no maintenance paid as of date by the Applicant-Husband, to the Wife or to the daughter. When I had enquired with the counsel appearing for the Applicant-Husband, whether, without prejudice to the rights and contentions, the Applicant would like to pay reasonable monthly maintenance which could be adjusted with the

amount finally decided by the the Family Court in the divorce proceedings, the Advocate for the Respondent-Wife submitted that the Applicant earns Rs.5,00,000/- per month as his salary, therefore he could pay a reasonable amount towards interim maintenance. As due to paucity of time, the interim maintenance applications are not immediately decided by the Courts. To this the Advocate appearing for the Applicant-Husband stated that the wife is earning more than the husband. Therefore there is no question of paying any maintenance.

8. Coming back to the facts of the transfer application, D.V. proceedings which are decided by the Magistrate Court can be challenged before the Sessions Court and from Sessions Court same can travel to the High Court. However, if the said proceedings before the Magistrate Court gets transferred to Family Court then the order passed by the Family Court can be challenged to the High Court. In turn, the wife loses the one forum. Therefore, if the wife being an aggrieved party has a right to chose forum, in my view, she cannot be deprived of this right.

9. The Supreme Court in the Judgment of *N.C.V. Aishwarya Vs. A. S. Saravana Karthik Sha* reported in *2022 SCC OnLine SC 1199* has held that the convenience of the wife has to be looked into while deciding the transfer application. Para 9 of the said Judgment which read 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.

(Emphasis Supplied)

10. In the present proceedings the Respondent-Wife does not want to directly go to the Family Court seeking relief under Section 18 to 22 of the D.V. Act. The Applicant-Husband is staying and working in Japan I am of the view that, there cannot be any inconvenience caused to the Applicant-Husband, as compared to the Respondent-Wife who is staying in Mumbai and is also taking care of her daughter.

11. A Single bench of this Court in the Judgment of ***Rohan Shah Vs. Nishgandha Shah*** reported in ***2023 SCC Online Bom 2719*** was dealing with the facts where the husband had made an application for transfer of the proceedings filed by the wife under Section 12 of the D.V. Act. The wife had left for U.S.A. and had filed proceedings in Mumbai. While dealing with this set of facts, the learned Single Judge of this Court in Paragraph No.116 held that no prejudice would be caused to the wife if the proceedings are transferred to Family Court. According to me, the facts in the case of ***Rohan Shah (supra)*** are exactly opposite to the facts of the present proceedings where the Applicant-Husband is staying in Japan.

12. Similarly two Single Judge of this Court in case of ***Sandip Mrinmoy Chakrabarty Vs. Reshita Sandip Chakrabarty & Anr.***

Reported in **2018 SCC Online Bom 2709** and in case of **Vijay Suryakant Kakade Vs. Anushka Vijay Kakade and Ors.** reported in **2023 SCC OnLine Bom 274** while dealing with the facts of those cases have transferred the proceedings on an application being made by the husband. The facts in these two cases are quite different than the present proceedings where the Applicant is staying in Japan and has declined to pay interim maintenance to wife and daughter.

13. The Single Judge of this Court in case of **Anuraag Agarwal Vs. Poonam Agarwal nee Mukim** reported in **2024 SCC Online Bom 2105** (Coram: Arun R. Pednekar,J.) while deciding the transfer application of the husband rejected the same wherein, the DV proceedings were filed by the wife in Metropolitan Magistrate Court and the husband had filed divorce proceeding in Family Court at Bandra. Paragraph Nos.15 to 17 of said Judgment read as under:-

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.

16. In the motion moved in the Parliament to pass the D.V Act 2005, the Hon'ble Minister in response to the concern raised by an as regards the limited time granted to the magistrate to decide the D.V Application had responded as under:

“ Shrimati Sumitraji is not present here. She said that the duration of 60 days is very less. But it has been mentioned in

the bill that magistrate shall try to dispose of the case within 60 days. Since this is an emergency law, therefore, it becomes necessary to set a time limit so that unnecessary delay may be avoided”.

Thus this Court should be slow in entertaining the application under Section 24 of the CPC to transfer application under Section 12 of the D.V Act instituted by the wife before the Magistrate to the Family Court.

17. The Supreme Court in a case of Mohammed Danish Abdul Wahab & Ors. V/s. Farjana Mohammed Dannish & Ors. Reported in 2024 SCC Online SC 1435” where transfer was sought of proceedings under the D.V Act to the Family Court, has passed following order:-

“1. The Petitioner No.1 who is the husband seeks transfer of the pending proceedings initiated under the Protection of Women from Domestic Violence Act, 2005. As the said proceedings being summary in nature where the legislature has consciously given an outer limit, we are not inclined to allow this Transfer Petition, instead we direct the Judicial Magistrate First Class, Bhivandi, Thane, Maharashtra to dispose of PWDVA No.51 of 2016 within a period of eight weeks from today.

2. The Transfer Petition, is accordingly, dismissed.

14. Therefore the facts in the case of **Anuraag Agarwal (supra)** and the present proceedings are quite similar. Therefore, according to me, there is no merits in the present transfer application.

15. Considering the facts of the present proceedings and the counsel for Applicant insisting upon arguing the matter inspite of caution, I am imposing a cost of Rs.25,000/- on the Applicant-Husband. The cost to be paid to the Respondent-Wife within a period of four weeks from today.

16. The Miscellaneous Civil Application is accordingly **dismissed**.

(RAJESH S. PATIL, J.)