

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO.442 OF 2024

Swapnil Sanjay Rakte	vs.	...Applicant
Vrushali Swapnil Rakte		...Respondent

Mr. Ajinkya Udane, for the Applicant.

CORAM : N. J. JAMADAR, J.
DATE : JANUARY 31, 2025

P.C:

1. Heard the learned counsel for the applicant.
2. The applicant/husband has preferred this application for transfer of the proceeding under section 125 of the Code of Criminal Procedure, 1973, being Misc. Application No. 279 of 2022, from the Court of JMFC, Yeola, Dist. Nashik to the Family Court at Pune.
3. The marriage of the applicant and respondent was solemnized on 23rd November, 2019 at Ahmadnagar. They are blessed with a son.
4. In the wake of marital discord, the respondent has instituted a petition for award of maintenance under section 125 of the Code before the court of JMFC, Yeola. The applicant asserts the respondent has deserted the applicant. It was the respondent who subjected the applicant to extreme matrimonial cruelty. As the applicant desires to continue the marital bond, the applicant has

instituted a petition for restitution of conjugal rights being Petition No. A-2383 of 2022 before the Family Court at Pune. Since the applicant is working at Pune and also suffers from ailments, it is extremely inconvenient for the applicant to travel to Yeola from Pune to attend the said proceeding under section 125 of the Code. It is, therefore, necessary to transfer the said proceeding from the Court of learned Magistrate at Yeola to the Family Court at Pune.

5. The respondent has not entered appearance despite the service of notice. It appears that on 21st October, 2024 Mr. Dhananjay Joshi had made a statement that he had instructions to appear on behalf of the respondent. However, Vakalatnama has not been filed.

6. Mr. Udane, learned counsel for the applicant, submitted that the respondent has been regularly attending the proceeding before the Family Court at Pune. In fact, the respondent has filed an application for grant of traveling expenses. Thus, the respondent can conveniently attend the Family Court at Pune, even if the proceeding under section 125 of the Code is transferred to the Family Court at Pune. The applicant is ready to pay the traveling expenses. Mr. Udane also placed reliance on the medical prescriptions and diagnostic report to lend support to the submission that on account of the ailments the applicant is

suffering from, he is not in a position to travel to Yeola.

7. It is true the averments in the application have gone untraversed. However, the legal position in the matter of transfer of the proceeding arising out of matrimonial dispute is fairly well settled. It is the inconvenience of the wife that ordinarily commands precedence. A useful reference can be made to a judgment of the Supreme Court in the case of **N.C.V. Aishwarya Vs A.S. Saravana Karthik Sha**¹ wherein the principles were enunciated 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.”

8. In the case at hand, incontrovertibly, the respondent is residing at her parental home at Yeola along with her son. The fact that the respondent has appeared before the Family Court at Pune and sought traveling expenses, can not be construed against the

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respondent, much less, as a willingness on the part of the respondent to transfer the proceeding from Yeola to Pune. Appearance before the Court pursuant to summons issued by the Family Court at Pune does not make the said Court a forum of convenience for the respondent. The distance between Yeola and Pune is more than 200 km. It does not appear that respondent has the means and logistical support to effectively prosecute the proceeding for maintenance, if it is transferred to Family Court at Pune. Even otherwise, a summary inquiry is warranted for determining the proceeding under section 125 of the Code. Therefore, I do not consider it expedient in the interest of justice to transfer the proceeding under section 125 of the Code from the Court of learned JMFC, Yeola to the Family Court at Pune. The concern of the applicant, on account of health issues, can however be addressed by permitting the applicant to appear before the learned Magistrate, Yeola, Dist. Nashik through video conferencing.

9. The application, thus, deserves to be rejected.

Hence, the following order.

ORDER

1] The application stands rejected.

2] The applicant is at liberty to attend the proceeding in Misc.

Application No. 279 of 2022 in the Court of JMFC, Yeola, Dist. Nashik through video conferencing.

3] However, whenever the learned Magistrate considers it appropriate and directs the applicant to appear in person, the applicant shall appear before the learned Magistrate in person.

Application disposed.

(N. J. JAMADAR, J.)