

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****MISCELLANEOUS CIVIL APPLICATION NO. 222 OF 2025****SANTOSH SUHAS KELKAR****..... APPLICANT****VERSUS****ASHWINI SANTOSH KELKAR****..... RESPONDENT**

Adv. Sarthak Diwan i/b. Adv. Akshay Kulkarni for the Applicant.

Adv. Vaibhav Ugle a/w. Adv. Nitin Khamgaonkar for the Respondent.

CORAM : RAJESH S. PATIL, J.**DATE : 12 NOVEMBER, 2025****P.C. :-**

1) This transfer application has been filed by the applicant, who is the husband of respondent, seeking transfer of DV proceeding filed by the respondent-wife before the Judicial Magistrate First Class, Pune to the Family Court at Sangli.

2) I have heard learned advocates for both the sides and with their help, I have gone through the documents on record.

3) The applicant-husband is staying at Sangli and is working as a employee in a college. The respondent-wife is staying at Pune with her 8 years old son who is studying in Indian Model International School at Pune. The distance between Pune and Sangli is around 235 kms. It is the case of the wife that it will be difficult for her to attend

the proceeding on the date of hearing at Sangli and return back on the same day by travelling 235 kms. There is nobody else who could accompany her to attend the court proceeding at Sangli.

4) On behalf of the applicant-husband, it has been prayed that the applicant-husband is working as a college employee and is physically disabled and is staying with his parents. Therefore, it will not be possible for him to travel to Pune to attend the court proceeding.

5) I have heard learned advocate appearing for the applicant. The applicant who is husband of the respondent, is seeking transfer of Domestic Violence proceeding filed by the respondent-wife. The said proceeding is filed under Sections 12, 18 to 21 and 23 of the Divorce Violence Act.

6) Section 26 of the Domestic Violence Act permits only the aggrieved party to file proceedings under Sections 18 to 22 also before the Civil Court/ Family Court/Criminal Court. Hence, the Family Court will have no jurisdiction to entertain the application under Section 17 or 23 of the Domestic Violence Act.

7) The Hon'ble Supreme Court in case 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 seen for the

transfer proceedings. Paragraph no.9 of the said judgment reads 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)

8) I have already held in ***Misc. Civil Application No. 239 of 2024 (Jyoti Abhijeet Kandage vs. Abhijeet Narayan Kandage & Ors.)*** that reliefs under Sections 18 to 22 of the Domestic Violence Act, can even be sought before the Family Court under the provisions of Section 26 of the Domestic Violence Act. Paragraphs 15, 15.1, and 15.2 read as under:

15) Considering the Sections of D.V. Act, and the Judgments discussed in the above paragraphs, it becomes evident that Family Court has power to decide complaint which seeks relief under Sections 18 to 22 of the D.V. Act. Hence in my opinion, transfer of proceedings from Magistrate's Court to Family Court pertaining to relief claimed under Section 18 to 22 of the D.V. Act can be allowed. However, if a transfer proceedings is not a bonafide one, then on merits such a transfer on case to case basis can be rejected. One has to also keep in mind the stage of the proceedings of which transfer is sought.

15.1) Section 26 of D.V. Act, refers to only reliefs sought under Section 18 to 22. Therefore, application/complaint seeking relief under any other section of D.V. Act viz. Section 31, etc. would not be maintainable before Family Court.

15.2) So also, one has to also keep in mind who is coming to the court for the

transfer of the proceedings, whether it is the Wife or the Husband or any other party. Since a choice is given to the aggrieved person under the D.V. Act to choose the forum for reliefs sought under Section 18 to 22, (i.e.) before the Magistrate under Section 12 or to the civil court, family court or criminal court under Section 26, such transfer if sought by a Wife, considering the judgment of the Supreme Court in the case of *N.C.V Aishwarya* (supra) will have to be considered favourably.

9) In the present proceeding, Section 23 of the Domestic Violence Act is also involved. Therefore, in my view, the Domestic Violence proceeding cannot be transferred from the Judicial Magistrate First Class, Pune to the Family Court, Sangli. In the present proceeding, the applicant-husband is seeking transfer from Pune to Sangli. The distance between two cities is around 235 kms. The applicant-husband is expecting his wife to travel 235 kms one way and return back travelling 235 kms, which will together be travel of around 12 hours.

10) Considering the law as laid down in the above judgments, and the facts of the present matter, I find no merits in the present Miscellaneous Civil Application.

11) This matter was infact argued yesterday. I had pointed out the relevant judgments to the learned advocate appearing yeaterday for the applicant-husband; at his insistence, the matter was kept today. Today, Mr.Diwan appeared and when I showed my disinclination to entertain the application, he insisted upon arguing the matter further. Hence, at this juncture, learned advocate appearing

for the respondent-wife pressed for imposing cost on the applicant for wasting judicial time when lots of litigants are waiting for their turn.

12) It is also important to note that the applicant-husband is not paying any amount of maintenance to his wife-respondent or to his son, though he is aware that the respondent-wife is a home-maker and monetarily and emotionally dependent on her mother and brother as her father has already expired. On this Court query, advocate for the applicant informed that the applicant-husband is waiting for the interim maintenance application to be decided in the DV proceedings.

12.1) He has not volunteered in the meantime without prejudice to his rights and contentions to pay any sum towards interim maintenance to his wife and/or to his school going son.

13) Hence, the **present Miscellaneous Civil Application stands rejected with cost of Rs.25,000/- to be paid by the applicant-husband within a period of four weeks from today to the respondent.** The said amount of cost can be directly paid in the bank account of the respondent-wife.

14) Miscellaneous Civil Application is disposed of accordingly.

[RAJESH S. PATIL, J.]