

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

MISCELLANEOUS CIVIL APPLICATION NO. 279 OF 2025

ALONGWITH

INTERIM APPLICATION NO. 9956 OF 2025

IN

MISCELLANEOUS CIVIL APPLICATION NO. 279 OF 2025

Bhavik Niranjana Shah & Ors.

...Applicants

V/s.

Jinal Shah

...Respondent

Mr. Pradeep Sancheti, Senior Advocate a/w. Mr. Paarth Singh
i/b. Mr. Manan Sanghai for the Applicants.

Mr. Rohaan Cama a/w. Ms. Kavisha Shahh i/b. India Law Alliance for
the Respondent.

CORAM : RAJESH S. PATIL, J.

DATE : 14 OCTOBER, 2025

P.C. :-

1) This transfer proceeding is filed by the applicant, husband
of the respondent, seeking transfer of the D.V. proceedings pending
before the Metropolitan Magistrate, Andheri to the Family Court at
Bandra.

2) After I had heard the learned Counsel for the parties and
as I had shown my disinclination to allow the application, an
opportunity was given to the counsel appearing for the Applicant-
Husband to withdraw the Miscellaneous Civil Application. However,

on instructions, the counsel has invited an order to be passed on merits.

3) Learned Senior Counsel on behalf of the husband submitted that the Family Court is already seized of matrimonial proceedings between the same parties involving substantially similar issues such as divorce, maintenance and custody. Hence to avoid multiplicity of proceedings and to avoid contradictory findings, the D.V. proceedings be heard with Family Court petition.

4) It is the case of the Respondent that she has filed custody petition before the Family Court. So also, interim maintenance application before the Family Court, Bandra under Section 125 of the Code of Criminal Procedure, 1973. The said petition is opposed by the respondent-husband who is a developer/builder, having many projects in the City of Mumbai. So also, the respondent-wife has filed a divorce petition before the Family Court at Bandra and also a Section 498-A complaint before the Court of Metropolitan Magistrate, Andheri. And there are few more police complaints filed before the police station at Andheri.

5) I have heard learned counsels for both the sides and have gone through the documents on record.

6) There are two children involved in the ugly fight of

parents. A 7 year old son and a 3 year old daughter. As of today, the applicant-husband and respondent-wife are staying in separate flats opposite each other in the same building, and on the same floor. I have been told that they have been staying separately for last more than 1 year and 10 months.

7) The D.V. proceeding is at the stage of hearing of the interim maintenance application before the Family Court at Bandra and the said proceeding is opposed by the applicant-husband. Even if it is presumed that the D.V. proceedings are transferred to Family Court, Bandra, even then Section 498-A complaint will still remain in the Metropolitan Magistrate Court, Andheri.

8) The 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)

9) So also I have taken a view in case of ***Jyoti Abhijeet Kandage vs Abhijeet Narayan Kandage and ors.*** in ***Miscellaneous Civil Application No. 239 of 2024 order dated 15 September, 2025*** that the choice to select the Forum is of aggrieved person. Paragraph nos. 15 and 15.2 reads 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.

15.2) 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.

10) Considering the law laid down by the Supreme Court in case of *N.C.V Aishwarya* (supra) and facts of the present proceedings where the applicant-husband has opposed maintenance application which is pending before the Metropolitan Magistrate Court at Andheri and also before the Family Court, he has not volunteered to pay any amount to the respondent-wife though he is a developer/builder, having many projects in the City of Mumbai, this coupled with the fact that the D.V. proceedings are filed by wife under Sections 17 to 20 and 22 of the Domestic Violence Act and under the provisions of Section 26, the reliefs available only under Sections 18 to 21 and 22 may also be sought before a civil court, family court or a criminal court by the aggrieved person (wife). Hence, according to me this application has no merits and the same requires to be dismissed with cost.

11) The present **Miscellaneous Civil Application stands rejected** with cost of Rs.1,00,000/- to be paid by the applicant-husband to the respondent-wife within a period of four weeks from today.

12) In sequel, **interim application also stands disposed off.**

[RAJESH S. PATIL, J.]