

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

MISCELLANEOUS CIVIL APPLICATION NO. 313 OF 2025

**ANAND
SUDHAKAR
SUDAME**

Ganesh alias Kedar Nanasaheb Gaikwad

..Applicant

Versus

Mukta Ganesh alias Kedar Gaikwad & anr.

..Respondents

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Date: 2025.09.29
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Ms. Sabina Ansari a/w. Mr. Aditya Parmar, Ms. Tanvi Rane i/b.
Mr. Meenaz Mozawalla & Hulyalkar & Associates, Advocates, for the
Applicant

Mr. Siddharth Jagushte, Advocate, for the Respondent

CORAM : RAJESH S. PATIL, J.

DATE : 23.09.2025

P. C.

1. The present transfer Application has been filed by the Applicant – husband of Respondent No. 1 seeking transfer of D. V. proceedings filed by Respondent No. 1 – wife, in the Court of learned JMFC, 9th Court, Pune to the Family Court at Pune.

2. It is the case of the Applicant – husband that Respondent No. 1 – wife has filed a Divorce Petition in the Family Court at Pune. Therefore, it would be convenient, if the D. V. proceedings filed by Respondent No. 1 – wife are transferred to the Family Court, Pune, so that both the proceedings can be clubbed together and heard on merits.

3. On behalf of Respondent No. 1 – wife it is submitted that the

Applicant – husband at present is languishing in Amravati Central Jail, Amravati. The cause title shows that the Applicant is in Yerwada Central Jail, Pune. It is submitted that he is behind bars for four different kinds of complaints, which include MCOC complaint and I.P.C. offences. The worth of the Applicant – husband is around Rs. 5000 crores. However, he is not ready to pay the interim maintenance as sought by Respondent No. 1 – wife in D. V. proceedings for herself and her son aged 6 years, who is a “special child”.

4. Though it is submitted before me that the Applicant – husband is opposing the interim maintenance Application as he has given away two flats to Respondent No. 1 – wife.

5. The Hon’ble Supreme Court in the case of ***N. C. V. Aishwarya vs. A. S. Saravana Karthik Sha***, reported in ***2022 SCC OnLine Sc 1199***, has held that in all transfer proceedings, convenience of the wife has to be taken care of. Paragraph 9 of the said decision 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)

6. In the present proceeding, there is no dispute that the Applicant – husband is behind bars from the year 2021. His Bail Applications have been rejected by the trial Court and his few Bail Applications are pending before this Court.

7. The interim maintenance Application filed by Respondent No. 1 – wife is pending for hearing from the year 2022. Respondent No. 1 – wife is living with her son aged 6 years who is a “special child”. A learned Single Judge of this Court (Coram : Arun R. Pednekar, J.) in the case of **Anurag Agarwal vs. Poonam Agarwal nee Mukim**, reported in **2024 SCC OnLine Bom 2105** in paragraph Nos. 15 to 17 has held 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 if 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 v. Farjana Mohammed Danish, 2024 SCC OnLine SC 1435” where transfer was sought of proceedings under the D. V. Act to the Family Court, has pass 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.”

8. I am in agreement with the view taken by the learned Single Judge of this Court. The Applicant – husband here is a person, who is behind bars for the last 4 years and has opposed the Application for interim maintenance filed by Respondent No. 1 – wife. He has son, who is a “special child” aged 6 years and who is staying with Respondent

No. 1 – wife. In such situation, according to me, there is no merit in the Application and the same requires to be rejected.

9. Considering the conduct of the Applicant, in my opinion, there must be an Order against the Applicant and in favour of the Respondent. The MCA stands rejected with costs of Rs. 50,000/- to be paid to the Respondent within a period of four weeks from today.

10. If the costs is not paid within time, the Respondent is entitled to put this Order in execution against the Applicant for recovery of such costs.

(RAJESH S. PATIL, J.)