

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISCELLANEOUS CIVIL APPLICATION NO. 349 OF 2025

ANAND
SUDHAKAR
SUDAME

Mrs. Heena Kausar Mohammad Saad Shaikh

..Applicant

Versus

Mr. Mohammad Saad Feroz Shaikh

..Respondent

Digitally signed
by ANAND
SUDHAKAR
SUDAME

Mr. Ranjit M. Pawar, Advocate, for the Applicant

CORAM : RAJESH S. PATIL, J.

Date: 2025.12.16
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DATE : 12.12.2025

P. C.

1. In the present proceeding, the Applicant, who is the wife of the Respondent is seeking transfer of the Petition filed by the Respondent – husband under Section (89)3 of the Mohammedan Law (for restitution of conjugal rights) pending before the learned Family Court, Pune to the learned Additional District Judge, Baramati, District – Pune.

2. Office remarks show that the Respondent has been duly served. However, none appears for the Respondent when the matter is called out. It seems that the Respondent is not interested in appearing in the present proceeding. Hence, I have proceeded further with the hearing of the MCA. Even on the earlier occasion, when office remarks showed that the Respondent was served, he did not appear.

3. It is the Applicant's case that she is staying at Baramati, District – Pune along with her parents and three years old daughter. She has filed a D. V. complaint and a complaint under Section 498A of the Indian Penal Code, 1860 (for short “**IPC**”) at Baramati, District – Pune and thereafter, the Respondent – husband has filed the Petition for restitution of conjugal rights before the learned Family Court, Pune. It is argued before me that the Respondent – husband's Petition is nothing but counter blast to the complaint filed by the Applicant – wife. It is not possible for the Applicant – wife to travel 110 Km to attend the Court proceeding and return back on the same day along with her three years old daughter. There is no body to accompany her to travel to Pune from Baramati. It will be inconvenient if the proceeding filed by the Respondent – husband are transferred from Pune to Baramati, District – Pune.

4. The Supreme Court in the case of ***N. C. V. Aishwarya vs. A. S. Sarvana Karthik Sha***, reported in ***2022 SCC OnLine SC 1199*** has held that while considering transfer proceedings, convenience of the wife has to be taken into consideration. Paragraph 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 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)

5. The Respondent – husband is not paying any maintenance to the Applicant or to the daughter. Considering the law as laid down by the Supreme Court in the case of ***N. C. V. Aishwarya*** (Supra) and facts of the present case, I am convinced that this MCA requires to be allowed.

6. The Miscellaneous Civil Application **stands allowed** in terms of **prayer clause (A)**.

6.1 The proceeding, being Petition No. A/95/2025 pending before the Family Court, Pune be transferred to the learned Additional District Judge, Baramati, District – Pune within a period of four weeks from today.

6.2 Learned Counsel for the Applicant is hereby directed to convey the order passed today to **the Family Court, Pune** where the matrimonial proceedings are pending, and file Affidavit of service to that effect within a period of two weeks from today.

6.3 Similarly, Registrar (Judicial – I) is hereby directed to communicate the order passed today to **the Registrar of the Family Court, Pune by E-mail.**

(RAJESH S. PATIL, J.)