

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
MISCELLANEOUS CIVIL APPLICATION NO. 360 OF 2025**

Satish Arikalat Balan ... Applicant
vs.
Seema Satish Balan nee Seema Narayan Mantri ... Respondent

Mr. Subodh Desai, Senior Advocate, i/b. Ms. Tanvii G. Tapkire for applicant.

Ms. Ankita Phadke for respondent.

**CORAM : RAJESH S. PATIL, J.
DATE : 22nd SEPTEMBER, 2025**

P.C. :-

1. This transfer petition is filed by husband, seeking transfer of domestic violence proceedings filed by the respondent-wife before the Court of 60th Metropolitan Magistrate Court, Kurla, Mumbai to Family Court, Bandra, Mumbai.

2. Mr. Desai, learned senior counsel appearing for the applicant-husband submits that the applicant has filed an injunction suit against the wife on 05.08.2024 before Family Court, Bandra. The respondent-wife has filed domestic violence proceeding before the Court of the Judicial Magistrate First Class (JMFC), Kurla. So also, the wife has filed a divorce proceeding before Family Court, Bandra and on 13.07.2025, the applicant-husband has also filed a divorce proceeding

against the respondent-wife. There are two daughters born out of the wedlock, who are staying with the respondent-wife. The respondent has also filed First Information Report (FIR) for offence punishable under Section 498A of the Indian Penal Code, 1860. The applicant is ready to take care of the daughters and can even pay for their rental accommodation, if they stay away from their mother i.e. the respondent-wife. However, the applicant is not ready to pay any amount to the respondent-wife. The learned senior counsel for the applicant-husband further submits that the matter can be heard by the same Judge in order to avoid conflict of judgments being passed in the proceedings between the husband and wife.

3. Ms. Phadke, learned counsel appearing on behalf of the respondent-wife, submitted that due to violence created by the applicant-husband, the wife had no option but to leave her matrimonial house. The respondent-wife is staying along with the daughters in a flat on leave and licence basis. The domestic violence proceeding filed by respondent-wife on 09.10.2024 is at a stage, where an application, preferred by the applicant-husband, challenging the maintainability of the domestic violence proceeding, is kept for orders today. She further submits that an interim application for

maintenance has been filed in the domestic violence proceeding and as of date, the said application is not being heard, as the applicant-husband is filing frivolous applications on technical grounds.

3.1. It is further submitted on behalf of the respondent-wife that the matrimonial home in which the applicant-husband is staying, is in the joint name of husband and wife and is worth around ₹ 15 crores. This is disputed by the learned Senior Counsel for the applicant-husband, as according to his instructions, the said flat would be worth only around ₹ 6 crores. It is also submitted on behalf of respondent-wife that the applicant-husband has filed an injunction suit, claiming 91% share in the said flat, without giving any kind of reasoning in law for the said claim.

3.2. It is further submitted that the respondent-wife has left her matrimonial home on 06.06.2024 and from that day, the applicant-husband has not bothered to pay any kind of monthly maintenance/compensation to the respondent-wife and the daughters. It is submitted that after the respondent left her matrimonial home, the daughters also left the home in the month of December 2024, and have joined their mother i.e. respondent. It is also submitted on behalf of the respondent-wife that she is a home-maker and the applicant-

husband is in the business, who owns a 4-star hotel by the name Orchid in Mumbai. This is disputed by the learned senior counsel appearing for the applicant-husband and as per his instructions, the hotel is rated as 3-star and not 4-star. It is also submitted by the learned counsel for the respondent-wife that the applicant is also a developer/builder, having various construction sites in Mumbai and therefore, the present application is devoid of merits and hence, the same ought to be rejected with costs.

4. I have already taken up a view that under Sections 18 to 22 of the Protection of Women from Domestic Violence Act, 2005 (PWDV Act), the choice of filing proceedings for reliefs is that of the aggrieved person, (in the present case, it would be the respondent-wife). She can file such a proceeding before a Magistrate or also before the Civil Court and/or before the Family Court.

5. In the present case, the respondent-wife has preferred to file such a domestic violence proceeding before the Court of Magistrate, as per her convenience. She has also filed FIR with Trombay Police Station for offence punishable under Section 498A of the IPC. A quashing proceeding was preferred by the husband, however, the same was subsequently withdrawn, in view of the law as laid down by

the Supreme Court in the case of **Neeta Singh and ors. vs. The State of Uttar Pradesh & ors., Special Leave to Appeal (Cri.) No(s). 13578/2024 dated 15.10.2024.**

6. There are two grown-up daughters out of the wedlock. While this matter was argued before me, I had suggested a way out to it. However, the applicant-husband insisted on giving a rental house by paying the rent, only if the daughters stay away from their mother i.e. the respondent. As of date, without prejudice to his rights and contentions, the applicant-husband has not voluntarily paid any kind of maintenance to his wife or daughters, from the day they left their home.

7. In the D.V. proceeding before the Kurla Magistrate Court, the applicant-husband has filed an application about maintainability of the D.V. proceeding, which has delayed the whole process, including the application of interim maintenance filed by the wife and daughters.

8. 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 transfer proceeding, convenience of wife is to be taken into consideration. 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. The Single Judge of this Court, in **Anuraag Agarwal vs. Poonam Agarwal nee Mukim** reported in **2024 SCC Online Bom 2105**, has held that if the law is read the way the husband is trying to canvas, then each and every transfer application filed by the husband, needs to be allowed. Paragraph Nos.15 to 17 of the said judgment read 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 endeavour to decide it in 60 days, whereas if a transfer petition is entertained by this Court it consumes 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.”²ⁿ

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 & Ors. V/s. Farjana Mohammed Danish & Ors. reported in 2024 SCC Online SC 1435” where transfer was sought of proceedings under the D.V. Act to the Family Court, has passed 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.”

10. The facts in the present proceeding are identical to the facts of **Anuraag Agarwal** (*supra*). In the said judgment, transfer of a domestic violence proceeding was sought by the husband within the city of Mumbai, which was rejected by imposing cost. In the said proceeding also, the husband was not ready to pay any maintenance to the wife.

11. In **Rohan Shah vs. Nishgandha Shah** reported in **2023 SCC Online Bom 2719**, a learned Single Judge of this Court was dealing with the case, where the wife was residing in USA. She had preferred an application seeking divorce in the Supreme Court of New Jersey. The said application was rejected. Thereafter, the husband, who was in Mumbai, filed an application for transfer, which was allowed by the Single Judge, based on the facts of that case.

12. Therefore, the law is well-settled that every transfer application has to be dealt with on the facts of that case. Coming to the facts of the present case, the husband does not want to pay anything to his wife and his daughters, leave aside a reasonable amount. Moreover, in the domestic violence proceeding filed by the wife, where she has preferred an application for interim maintenance, the husband has filed an application about maintainability of the domestic violence proceeding. Even in the matrimonial home of wife, which is in the joint name of both the parties, he is not ready to give her 50% share and he is claiming that his share is 91%, without giving any reasoning in law for the said percentage.

13. In such situation, according to me, there is no merit in the present application and the same is hereby **rejected**.

14. At this stage, the learned counsel appearing for the respondent-wife submits that her client seeks expeditious hearing of the domestic violence proceeding, especially her application for interim maintenance.

15. After hearing the learned counsel for both the sides, I am rejecting the present application and imposing cost of ₹ 1 lakh to the applicant, to be paid to the respondent-wife within a period of 4

weeks from today.

16. The hearing of domestic violence proceeding bearing No.DVC/6000300/2024 pending before the JMFC, 60th Court, Kurla, Mumbai, is hereby expedited.

[RAJESH S. PATIL, J.]