

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****MISCELLANEOUS CIVIL APPLICATION NO. 393 OF 2025****AMEYA LAXMINARAYAN PANT****..... APPLICANT****VERSUS****DEVYANI HARISHCHANDRA TIWARI****..... RESPONDENT**

Adv. Atharva Dandekar a/w. Adv. Dipesh Jain for the Applicant.

Adv. Kunal U. Shirgire i/b. Adv. Vikas Kolekar for the Respondent.

CORAM : RAJESH S. PATIL, J.**DATE : 10 NOVEMBER, 2025****P.C. :-**

1) The present application has been filed by the applicant who is husband of the respondent no.1, seeking transfer of the DV proceeding filed by the respondent no.1-wife from 13th Judicial Magistrate First Class, Dadar to the Family Court at Bandra.

2) I have heard Mr.Dandekar, learned advocate for the applicant in the morning session and after hearing him, I had informed him of my view in the transfer applications filed by the husband, where apart from Sections 18 to 22, even prayers under Sections 17 and 23 are also sought and whether he would like to withdraw the transfer application. At the request of Mr.Dandekar, this

matter was kept back in the afternoon session.

3) In the afternoon session, Mr.Dandekar on instructions from his client submitted that he has instruction to argue the matter on merits and therefore I heard him again.

4) In the present proceeding, the respondent no.1-wife has filed the DV proceeding before the Magistrate Court seeking relief under Sections 17 to 23 of the DV Act. The respondent-husband has filed a divorce proceeding before the Family Court, at Bandra.

5) By the present transfer proceeding, the applicant-husband is seeking transfer of the DV proceeding wherein reliefs under Sections 17 and 23 of the DV Act are sought. I have specifically pointed out to Mr.Dandekar, learned advocate appearing for the applicant, the provisions of Section 26 of the DV Act. The said Section 26 reads as under :-

26. Relief in other suits and legal proceedings.-

(1) Any relief available under sections 18, 19,20, 21 and 22 may also be sought in any legal proceeding, before a civil Court, family Court or a criminal Court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.

(2) Any relief referred to in sub-section (1) may be sought for in addition to and alongwith any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court.

(3) In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be

bound to inform the Magistrate of the grant of such relief.

6) Therefore, Section 26 is quite clear that only if the reliefs are sought under Sections 18 to 22, the proceeding can be filed by the aggrieved person before the Civil Court, Family Court or Criminal Court. In the present proceeding, the aggrieved person (wife-respondent no.1) has sought relief under Sections 17 to 23 of the DV Act before the Magistrate Court under Section 12. When the said fact was pointed out to Mr.Dandekar, he submitted that Section 17 deals with right to reside in a shared household and Section 19 is the remedy to pass residence order.

7) 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 by aggrieved person 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.

8) 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 while deciding 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) Considering the law as laid down in the above judgments, and looking into the facts of the present matter, I find no merit in the present Misc. Civil Application.

10) At this juncture, learned counsel for the respondent

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

11) Thus, present Misc. Civil Application stands rejected with cost of Rs.1 lakh to be paid by the applicant (who is working as a Manager, Legal in Godrej) to the respondent no.1-wife within a period of four weeks from today.

12) Misc. Civil Application is disposed of accordingly.

[RAJESH S. PATIL, J.]