



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

MISCELLANEOUS CIVIL APPLICATION NO. 347 OF 2024

Salma Ansar Shaikh

...Applicant

**Versus**

Ansar Bashir Shaikh

...Respondent

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Mr. Sheikh Mohd. Rasiq h/f Mr. Shaikh Kayyum Najir, Advocate for the  
Petitioner/Applicant/Appellant.

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**CORAM : ABHAY J. MANTRI, J.**

**DATE : APRIL 24, 2026**

**PER COURT :**

1. By this Application, the Applicant seeks to transfer the Suit bearing Regular Civil Suit No.602 of 2024, pending before the learned Civil Judge, Junior Division, Newasa, to the learned Civil Judge, Junior Division, Aurangabad.

2. Heard learned counsel for the Applicant. None appears for the Respondent, though served either in the Court Hall or through video conferencing mode, nor has he filed an Affidavit-in-Reply, which leads to an inference that the Respondent has no grievance about the averments made in the Application. Perused the record.

3. The Applicant got married to the Respondent on 02<sup>nd</sup> March 2008. After cohabiting with the Respondent for some years, the Respondent deserted her on 08<sup>th</sup> May 2024 without any reason. Thereafter, the Applicant

has been residing with her mother. She has filed proceedings under the Protection of Women from Domestic Violence Act, 2005 (for short “*DV Act*”) against the Respondent, which were partly allowed. Against the same, the Respondent has preferred an appeal before the District and Sessions Judge, Aurangabad, which is pending. To counter the said proceedings, the Respondent filed a suit for restitution of conjugal rights against her under Section 281 of the Mahomedan Law before the learned Civil Judge, Junior Division, Newasa; therefore, the Applicant has moved this Application.

4. Learned counsel for the Applicant, during the course of arguments, drew my attention to Section 281 of the Mahomedan Law as well as placed reliance on the judgment of the Gujarat High Court in *Jinnat Fatma Vajirbhai Ami Versus Nishat Alimadbhai Polra*<sup>1</sup>.

5. The Applicant contended that she has no source of income and it is inconvenient for her to travel and attend the proceedings at Newasa, which is approximately 55 km away. The Applicant is unable to bear the financial burden of travelling and attending the proceedings at Newasa. Similarly, the appeal between the same parties under the provisions of the DV Act is pending before the learned Additional Sessions Judge, Aurangabad; therefore, she urged that the suit for restitution of conjugal rights be transferred to the Court at Aurangabad to avoid inconvenience to her and multiplicity of litigation.

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<sup>1</sup> 2021 SCC OnLine Guj 2075

6. The Hon'ble Supreme Court in the Case of *N.C.V. Aishwarya Versus A. S. Saravana Karthik Sha*<sup>2</sup>, has observed that 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, they must take into account the economic soundness of both parties, the social strata of the spouses, their behavioural patterns, their standard of life before and after the marriage, and the circumstances. The Court also has to exercise interference when one proceeding is pending before one Court and another proceeding is pending before another Court; in such events, it would be appropriate to transfer all proceedings to one Court to avoid inconvenience to the wife.* Apart from that, the Hon'ble Supreme Court, in a catena of judgments, has held that it would be appropriate to transfer the proceedings to the place where the wife resides to avoid causing her any inconvenience.

7. Having considered the above facts that the Applicant has no source of income and it is inconvenient for the Applicant to travel and attend the proceedings at Newasa, it apparently indicates that she will have to endure hardship and suffering. Consequently, in view of the dictum laid down by the Hon'ble Apex Court in the Case of *Aishwarya* (supra), in my opinion, it would be appropriate to transfer the suit bearing Regular Civil Suit No.602 of 2024 pending before the learned Family Court, Newasa, Dist. Ahmednagar to the Court of the learned Civil Judge, Junior Division,

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<sup>2</sup> AIR Online 2022 SC 1268

Aurangabad.

8. As a result, *Miscellaneous Civil Application is allowed in terms of the prayer clause (B).*

9. The Application is disposed of. No order as to costs.

(ABHAY J. MANTRI, J.)