

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

MISCELLANEOUS CIVIL APPLICATION NO. 471 OF 2025

Monali Hitendra Sharma

..Applicant

Versus

Hitendra Kantilal Sharma

..Respondent

Ms. Sayli Wani, Advocate, for the Applicant

Mr. B. R. Patil, Advocate, for the Respondent

CORAM : RAJESH S. PATIL, J.

DATE : 25.03.2026

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1. By the present transfer Application, the Applicant, who is the wife of the Respondent – husband is seeking transfer of the Petition filed under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights filed by the husband before the Family Court, Jalgaon to the Family Court, Bandra, Mumbai.

2. Ms. Wani, learned Advocate appearing for the Applicant submits that the Applicant is residing at Mumbai along with her 14 years old son, who is schooling in Mumbai. The Respondent has filed section 9 proceedings before the Family Court at Jalgaon. After the Applicant had filed divorce proceedings before the Family Court at Bandra and DV complaint before the Metropolitan Magistrate Court at Borivali,

Mumbai. The restitution proceeding filed by the husband is the counter blast to the proceedings filed by the Applicant.

3. The distance between Mumbai and Jalgaon is around 490 kms. It will be difficult for the Applicant to travel around 10 – 11 hours to attend the Court proceedings at Jalgaon and return back again by travelling 10 – 11 hours to Mumbai.

4. Ms. Wani further submits that the Respondent-husband is not paying any amount towards maintenance to the Applicant or to their son.

5. Hence considering the convenience of the Applicant, the proceedings filed by the husband be transferred from the Family Court, Jalgaon to the Family Court, Bandra, Mumbai and be heard alongwith the divorce proceeding filed by the Applicant.

6. Ms. Wani, learned Advocate for the Applicant further submits that Affidavit-in-reply has been filed by the husband in the present proceeding on 25.02.2026.

7. She has pointed out to me paras 2 & 5 of the Affidavit-in-reply, where a specific statement on oath has been made by the Respondent – husband that he has responsibility of his old aged parents and other family members. Therefore, it would be inconvenient for him, if the present Miscellaneous Civil Application is allowed and the Petition for

restitution of conjugal rights is transferred from Family Court, Jalgaon to the Family Court, Bandra, Mumbai.

8. Ms. Wani, learned Advocate for the Applicant submitted that in fact, mother of the Respondent died in the year 2007 and father died in the year 2020. Therefore, on oath, in Affidavit, a false statement has been made by the Respondent – husband. Hence, an action for the offence punishable for perjury may be taken against him. She further pointed out that the Petition for restitution of conjugal rights has been filed by the Respondent – husband before the Family Court, Jalgaon and more particularly, in para 7 of his Affidavit-in-reply, there is a reference to the father of the Respondent having died due to Covid-19.

9. Mr. Patil, learned Counsel for the Respondent submits that the meaning of parents means “family members”. He submits that on instructions of his client, he has drafted and filed the same.

10. 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 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)

11. Considering facts of the present case and the law as laid down by the Supreme Court in the case of **N. C. V. Aishwarya** (Supra), I am convinced that the present Miscellaneous Civil Application requires to be allowed.

12. The **Miscellaneous Civil Application stands allowed in terms of prayer clause (a) and disposed of.**

13. The proceeding, being the Marriage Petition No. 123 of 2025 pending before the Family Court, Jalgaon be transferred to the Family Court, Bandra, Mumbai within a period of four weeks from today.

14. Learned Counsel for the Applicant is hereby directed to convey the order passed today to the Family Court, Jalgaon who is hearing the matrimonial proceedings and file affidavit to that effect within a period of two weeks from today.

15. The Registrar (Judicial-I) is hereby directed to communicate the order passed today to the Registrar of the Family Court, Jalgaon by Email.

16. *Prima facie*, I am of the view that a false statement is made on oath by the Respondent, hence a show-cause notice is issued to him asking him why criminal action for the offence punishable for perjury should not be taken against him, returnable on **06.05.2026**. The matter to come up on board under the caption "*For Directions*" on **06.05.2026**.

(RAJESH S. PATIL, J.)