



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

15 MICS. CIVIL APPLICATION NO. 5/2026

Mrs Prama Vivek Mistry

..Applicant

VS

Mr Vivek Rameshchandra Mistry

..Respondent

Adv. Pushpa Verma a/w. Adv. Moiez Shaikh for applicant.

Adv. Vivek R. Mistry – party in person present.

CORAM : RAJESH S. PATIL, J.

DATE : 27 FEBRUARY 2026.

P.C. :

1) By present transfer application, the applicant – wife of the respondent – husband is seeking transfer of her own divorce proceeding filed u/s. 13 of the Hindu Marriage Act before the Family Court at Thane to the Family Court at Bandra, Mumbai.

2) The respondent – husband appears in person and submits that on the earlier round of litigation, the applicant – wife seeking transfer of the husband's proceeding pending before the Family Court at Bandra, Mumbai, to be transferred to the Family Court at Thane was rejected by this Court. Therefore, he submits that the present Misc. Civil Application also be dismissed.

3) From the proceedings I would gather that the divorce

proceedings filed by the husband before Family Court at Bandra, Mumbai, is prior in time i.e. August 2021 and the divorce proceeding filed by wife before Family Court at Thane is of September 2024. Both the proceedings are filed u/s. 13 of the Hindu Marriage Act seeking divorce. By present transfer proceeding, applicant-wife is seeking transfer of her own proceeding from Thane to Mumbai.

4) I have already held in the judgment of *Suprabha Nitesh Patil @ Surabha Anant Kot vs. Nitesh Gajanan Patil – Misc. Civil Application 124/2024* that when both the parties are seeking divorce u/s. 10 and 13 of the Hindu Marriage Act whichever proceeding filed first, the second proceeding would be heard along with first proceeding. Paragraph nos. 6.1 and 7 read as under :-

6.1) It is pertinent to note that Sub-section (2)(b) of Section 21-A of Hindu Marriage Act, mentions the word "shall", so also sub-Section (3) mentions the word "shall" and whereas Sub-section (1) of Section 24 of C.P.C. uses the word "may". Therefore, the power to transfer proceedings are general in nature under Section 24 of C.P.C. to the High Court or the district court. Therefore, Section 21A of the Hindu Marriage Act, the word 'shall' is used, while in C.P.C., Section 24, the word 'may' has been used and in any case, the Hindu Marriage Act is a special law, while the C.P.C. is a general procedural law. While dealing with petition under Section 21A (1) (b) and 2(b), the Courts have to exercise powers of transfer under C.P.C. as mentioned in sub-section (3). In the present proceedings, the husband's application is filed under Section 21A of Hindu Marriage Act read with Section 24 of C.P.C. This section was in existence before the Hindu Marriage Act, 1955 came into force, unlike the amended section 25 of the C.P.C., which gives power to Supreme Court, to transfer suits after the 1976 amendment to C.P.C.

7) Hence, in my view taking into consideration the provisions of Section 21-A of the Hindu Marriage Act, when the proceedings are filed by the husband or wife under Section 10 (Judicial Separation) or for a decree of

divorce under Section 13, and thereafter another proceeding is filed by the other party to the marriage praying for judicial separation under Section 10 of Hindu Marriage Act or for a decree of divorce under Section 13, are presented to different district Courts, the petition presented later shall be transferred to the district Court in which the earlier petition was presented and both the petitions shall be heard and disposed of together by the district Court in which the earlier petition was presented.

- 5)** Considering the view taken by me in the judgment of *Suprabha Nitesh Patil @ Surabha Anant Kot* (supra), which squarely applies to the present proceedings, this Misc. Civil Application requires to be allowed.
- 6)** Present Misc. Civil Application stands **allowed** in terms of prayer clauses (b) and (c).
- 7)** The proceedings of Petition bearing No.462/2024 pending before the Family Court at Thane, be transferred within a period of four weeks from today to the Family Court at Bandra, Mumbai and be clubbed along with Petition No.A-3009/2021.
- 8)** The hearing of both Petitions is hereby expedited.
- 9)** At this stage, the respondents who appeared in person is ready to refer the dispute between the parties to the trained Mediator or else to the Retired Judge of this Court.
- 10)** Learned counsel appearing for the applicant submits that her client is also ready to refer the dispute to Mediator.

11) Hence, by consent of both the parties, Smt. Justice Anuja Prabhudessai, Former Judge of this High Court, is appointed as a Mediator. The address and contact number of the learned Mediator is as under :-

106, Arcadia Building, NCPA Marg,
Nariman Point, Mumbai – 400 021
(Email : justiceanujaprabhudessai@gmail.com)
Mobile No. 9823855445)

12) The fees of the Mediator will be borne by the respondent – husband.

13) Misc. Civil Application stands disposed of accordingly.

(Rajesh S. Patil, J.)