



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISCELLANEOUS CIVIL APPLICATION NO.61 OF 2022

Trishala Vaibhav Jain

... Applicant

Vs.

Vaibhav Manoj Jain

... Respondent

Mr.Pandit Kasar, Advocate for the Applicant.

Mr.S.M.Sabrad with Ms.Gracy Saldhana, Advocates for the Respondent.

CORAM : ABHAY AHUJA, J.

DATE : 24 AUGUST, 2023.

ORAL JUDGMENT :-

1. This application has been filed by the Applicant-wife seeking transfer of Hindu Marriage Petition No.24 of 2021 filed by the Respondent-husband for dissolution of marriage and pending before the Family Court at Alibaug to the Family Court at Pune.

2. Earlier the marriage between the Applicant and the Respondent was solemnized on 5th December, 2017 at Lonawala, Pune as per Jain religious customs as both the parties belong to Jain religion. It is submitted in the application that initially the Applicant-wife and Respondent-husband were staying happily with the mother of the Respondent at Alibaug. However, it is submitted that after few days of marriage, the Respondent and his mother

started subjecting the Applicant to cruelty and the Respondent with the help of his mother threw the Applicant out of the matrimonial home due to which she is forced to stay with her parents at Daund. It is submitted that the Applicant is a graduate but unemployed and therefore, has no source of income of her own on the basis of which she can sustain; that she is totally dependent on her old parents who also are not having any source of income. That earlier her father was having only a very marginal source of income.

3. Mr.Kasar, learned counsel for the Applicant would submit that the Applicant is staying with her parents and surviving on the basis of some meagre income that they derive from agriculture although the Applicant has a brother but he resides separately with his family. Learned counsel submits that therefore, the Applicant does not have any source of income of her own to travel from Daund to Alibaug which is 223 kms one way and also does not have any one to accompany her during such travel. Learned counsel would submit that therefore it is not only inconvenient for the Applicant to travel to Alibaug but also would cause undue hardship to her every time the matter is listed in Alibaug Court. Learned Counsel would submit that although she is eagerly desirous of cohabiting with the Respondent-husband, the Applicant has prayed that the matter be transferred to the Family Court, Pune in which jurisdiction the marriage has been solemnized and which would be around 60 to 70 kms for her one way and 150 kms for the Respondent-husband to travel from Alibag to

Pune. That the Respondent has several sources of income from different businesses and he would have no difficulty in travelling from Alibaug to Pune. Therefore, he urges the court that the marriage petition pending in the Alibaug Court be transferred to the Family Court at Pune.

4. On the other hand, Mr.Sabrad assisted by Ms.Gracy Saldhana, learned counsel for the Respondent-husband would firstly submit that despite several attempts to amicably settle the matter, the settlement has not gone through due to the adamant nature of the Applicant and it is unlikely that the husband would want to cohabit with the Applicant-wife again. Learned counsel would submit that the Respondent resides in Alibaug; he has a mother who is 56 years old and has many health issues and has been advised complete bed rest and is unable to even do household chores. And if she has to be examined as a witness which she will have to be, then for the Respondent's mother to travel from Alibaug to Pune would not only be inconvenient but considering her health issues would also cause undue hardship and strain on her body. Learned counsel also submits that the Respondent-husband resides in Alibaug and also carries a business there. Learned Counsel would submit that the Respondent-husband runs an imitation jewellery shop and he would have to keep shop shut which is the only source of his livelihood if he has to travel to Pune every time the matter is listed. Learned counsel would also submit that the stage at which this court had granted interim stay on the proceeding pending in the Alibaug Court was at the

stage for evidence which is a fairly advanced stage after filing of the written statement of the wife and that process would be hindered and delayed if the proceedings are transferred from Alibaug to Pune. Moreover, the other witnesses would also need to travel from Alibaug to the Family Court at Pune which would not only be inconvenient but also cause undue hardship to the Respondent-husband. That this application for transfer has been preferred only to delay the proceedings and to harass the Respondent-husband. Learned counsel would therefore, submit that this Application be dismissed.

5. I have heard Mr.Pandit Kasar, learned counsel for the Applicant and Mr. Sabrad assisted by Ms.Gracy Saldhana, learned counsel for the Respondent at length and with their assistance also perused the application and the reply and considered the rival contentions.

6. This is a case where the marriage between the Applicant and the Respondent was solemnized on 5th December, 2017 as per Jain religious rights. The Applicant and the Respondent resided happily initially. However, allegedly due to the cruelty meted out to the Applicant by the Respondent and his mother, she was forced out of her matrimonial home and compelled to stay with her parents in Daund which is 223 kms from Alibaug. These allegations are denied by the Respondent-husband. In the reply filed to the application, the Respondent-husband has stated that it was the Applicant who left matrimonial

house and that the Respondent and his relatives tried to request her to come back to matrimonial house which she refused. That since she had left for more than 2 years and after all efforts at a settlement were unsuccessful the Respondent filed the petition for divorce at Alibaug on 9th August, 2021 seeking dissolution of marriage on the grounds of cruelty and desertion.

7. It is not in dispute that the distance between Daund and Alibaug is around 223 kilometers one way. The Applicant appears to be unemployed and dependent on her parents for her financial needs as she does not have her own independent source of income. The travel between Daund and Alibaug would increase the expenses of the otherwise purportedly weak financial condition of the Applicant which is denied by the Respondent. It also appears that the applicant does not have any one to accompany her from Daund to Alibaug. As such it would not only be inconvenient for the Applicant to travel 223 kilometers one way every time the matter is listed before the Alibaug Court but would also cause her undue hardship. Although the Respondent-husband has claimed that it would be inconvenient for him also to leave his business at Alibaug and also the care of his mother who is suffering from various ailments and it would be difficult for her to travel to Pune for the purpose of her examination as a witness and that other witnesses also would have to travel to give evidence would be inconvenienced, however the Respondent who appears to be financially well off can always travel with his mother by a comfortable mode of transport to

Pune and also make comfortable boarding and lodging arrangements. Besides in view of settled law in the prevailing structure of socio-economic paradigm in Indian society, that while considering the transfer application firstly the wife's convenience must be looked at and secondly it is the convenience of the wife that has to be preferred over the convenience of the husband, therefore, although the husband and his mother may face some inconvenience, it is the convenience and hardship of the wife that has to be given preference. And no doubt the stage at which this court had stayed the Alibaug Court proceedings was the stage of evidence, however, considering the inconvenience and hardship as elaborated above being caused to the Applicant-wife, this Court is inclined to allow the application.

8. My above view draws support from the decisions of the Hon'ble Supreme Court in the case of **N.C.V. Aishwarya Vs. A.S. Saravana Karthik Sha**¹ where the Hon'ble Supreme Court has clearly observed that in proceedings of this nature it is the convenience of the wife or the undue hardship caused to the wife that has to be considered. Paragraph No.9 of the said decision is quoted 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

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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 like. 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. Also in the case of **Yasmeen Anjum Vs. Rashid Khan**², this court in paragraphs No.10 to 12 has observed as under :-

"10. The settled principle of law for exercise of power under Section 24 of the Code of Civil Procedure, 1908 is that ends of justice should demand the transfer of the suit, appeal or other proceeding. That it is the undue hardship that would be caused to the wife that would be the determining factor. That in matrimonial disputes, it is the convenience of the wife which is preferred over the convenience of the husband.

11. The Hon'ble Apex Court in a recent decision (by Their Lordships Hon'ble Shri Justice S. Abdul Nazeer and Hon'ble Shri Justice J. K. Maheshwari, JJ) in the case of **N.C.V. Aishwarya ..V/s.. A. S. Saravana Karthik Sha**, dated 18.07.2022 in Civil Application No.4894 of 2022, has in paragraph 9 observed 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

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parties in eking out their livelihood and under whose protective umbrella they are seeking their sustenance to life. Given the prevailing socioeconomic paradigm in the Indian society, generally, it is the wife's convenience which must be looked at while considering transfer.”
(Emphasis Supplied)

12. In the case of ***Rajani Kishor Pardeshi ..V/s.. Kishor Babulal Pardeshi, 2005 (12) SCC 237***, the Hon'ble Apex Court while considering the argument of the husband opposing the transfer on the ground that it was equally inconvenient for him to go to Satana and that he would be willing to pay the expenses for the wife's travel to Mumbai, the Apex Court held that in these type of matters, the convenience of the wife would be preferred over the convenience of the husband and accordingly transferred the proceedings pending before Mumbai Court to the Family Court at Satana, Madhya Pradesh. Paragraphs 3 and 4 of the said decision are usefully quoted as under :

“3. The husband opposes the transfer on the ground that it is equally inconvenient for him to go to Satana and that he is willing to pay the expenses for her travel to Mumbai.

4. In this type of matter, the convenience of the wife is to be preferred over the convenience of the husband. Hindu Marriage Petition No.6 of 2004, Kishor Babulal Pardeshi v. Rajani Kishor Pardeshi pending before the Court of Civil Judge, Senior Division at Panvel, Mumbai, Maharashtra is transferred to the Family Court of proper jurisdiction at Satana, Madhya Pradesh.”
(Emphasis Supplied)”

10. In the circumstances, the application is made absolute in terms of prayer clause (a) which reads thus:-

“By an order of this Hon’ble Court, Hindu Marriage Petition No.24 of 2021 filed and pending on the board of Learned Family Court of Alibaug at Alibaug may be transferred to the board of learned Family Court of Pune at Pune.”

11. However, keeping in mind that the husband has a business in Alibaug and also a mother to take care, the Respondent-husband would be at liberty to appear before the Family Court at Pune through Video Conferencing if such facility is available, upon an application made in that behalf to the said Family Court on dates where his physical presence is not required. The same facility may be extended to the Applicant as well.

12. The application stands allowed in the above terms. Parties to bear their own costs.

13. It is made clear that any observation on the merits of the dispute between the parties is only to consider this application which shall not influence the trial or disposal of the Marriage Petition which is to be tried and decided on its own merits uninfluenced by the said observations.

(ABHAY AHUJA, J.)