

Ghuge

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISCELLANEOUS CIVIL APPLICATION NO.518 OF 2022

Arundhati Devendra Pathak ... Applicant
V/s.
Devendra Niteen Phatak ... Respondent

Mr. Ravi L. Jadhav a/w Ms. Pooja B for the applicant.

Mr. Abhijit D. Sarwate a/w Mr. Harder K Aidhen, Mr.
Ajinkya Udane for the respondent.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 20, 2023

P.C.:

1. Leave to amend. Amendment to be carried out forthwith.
2. The application is filed by the wife for transfer of Marriage Petition No.1933 of 2022 filed by husband at learned Family Court, Pune to learned Civil Judge, Senior Division, Panvel. The transfer is sought on the ground that it is inconvenient for the wife to travel to Pune to attend the hearing on each and every date. Apart from the said ground, additionally it is stated that she is dependent on her parents for the purpose of income. It is stated that she is not acquainted with any lawyer in Pune.
3. The husband has filed reply and contested the application stating that there is suppression of material of facts. It is stated that while applicant was working she used to travel to Pune. It would be inconvenient for the husband to travel to Panvel, as he

needs to take care of his mother. She had already travelled to various states in India and to Malaysia. Therefore, she can very well travel to Pune. In support of his submission he relied on the Judgment of Apex Court in the Case of **Anindita Das Vs. Srijit Das** reported in (2006) 9 SCC 197, **Gargi Konar Vs. Jagjeet Singh** reported in (2005) 11 SCC 446, **Preeti Sharma Vs. Manjit Sharma** reported in (2005) 11 SCC 535 and **Anu Kaul Vs. Rajeev Kaul** reported in (2009) 13 SCC 209 .

4. It is well settled principal of law that ordinarily convenience of the wife needs to be considered while deciding application for transfer of proceedings. The consistent law as is relied upon by the applicant on following judgments **Gauri Vs. Yogesh**, 2021 SCC Online Bom 6468, **Sumita Singh Vs. Kumar Sanjay** (2001) 10 SCC 41: AIR 2002 SC 396, **Vaishali Shridhar Jagtap Vs. Shridhar Jagtap** (2016) 14 SCC 188: AIR 2009 SC 1374, **Smita Dhanaanjay Patil Vs. Dhananjay Krishnakumar Patil** (2014) 1 AIR Bom R 450,

5. Recent view by Supreme Court is in **N.C.V Aishwarya Vs. A.S. Saravana Karthi Sha** in Civil Appeal No.4894 of 2022, decided on 18th July, 2022 which holds as follows.

“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 behavioral 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.”

6. In so far as the judgments relied upon by the opponent are concerned, there is neither a ratio nor clear preposition of law laid down by the Supreme Court which disentitles wife from seeking transfer of matrimonial proceedings on the ground of convenience.

7. More than 100 years back concept of ratio decidendi was clearly distilled by Lord Halsbury in **Quinn v. Leatham**, 1901 AC 495 (HL) wherein he observed :

... every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. *The other is that a case is only an authority for what it actually decides.* I entirely deny that it can be quoted for a proposition that may seem to follow logically from it.

8. It is useful to refer notable cases where Supreme Court has explained concept of ratio decidendi which are as follows :

i. **Regl. Manager v. Pawan Kumar Dubey**: (1976) 3 SCC 334, para 7

“It is the rule deducible from the application of law to the facts and circumstances of a case which constitutes its ratio decidendi and not some conclusion based upon facts which may appear to be similar. One additional or different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts.”

ii. **Union of India v. Dhanwanti Devi:**(1996) 6 SCC 44, p.52
para 9

“It is the rule deductible from the application of law to the facts and circumstances of the case which constitutes its ratio decidendi.”

iii. **Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd.:** (2005)
7 SCC 234 at P. 265 para 69

“It is a well-settled proposition that the ratio decidendi of a case is the principle of law that decided the dispute in the facts of the case and, therefore, a decision cannot be relied upon in support of a proposition that it did not decide.”

9. The mode and manner of delineating binding part of a judgment having precedential value has been spelled out by Supreme Court in **Union of India v. Dhanwanti Devi** reported in (1996) 6 SCC 44 as follows :

9. ... According to the well-settled theory of precedents, every decision contains three basic postulates — (i) findings of material facts, direct and inferential ... (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above.

10. The judgments of the Supreme Court relied by the husband arise out of peculiar facts of each case and the observation made therein are restricted to the facts of the case. Therefore, in my opinion the judgments relied by the opponent, in absence of absolute prepositions of law, would be of no help to the opponent.

11. In the facts of the present case, undisputedly, the applicant is residing at Panvel. Merely because while she was working she used

to travel to Pune does not disentitle her from seeking transfer of proceeding from Pune to Panvel. Convenience of the wife would be major factor while considering the application for transfer. The applicant is residing at Panvel and it would be inconvenient for her to travel to Pune and even otherwise husband is required to attend proceedings pending before criminal courts at Panvel.

12. In so far as the pending proceedings before the criminal courts at Panvel is concerned, it would be open for the husband to file appropriate application before the Concerned Court to fix the matters pending before it on the same day fixed by Civil Judge, Senior Division Panvel. If, such an application is filed, the Criminal Court, as far as possible and subject to his convenience, shall consider fixing the date along with other matters filed against the husband. It is made clear that if it is inconvenient for the Criminal Court to fix the dates on a particular date, the Criminal Court shall assign dates as per its convenience.

13. For the aforesaid reasons, Miscellaneous Civil Application is allowed in terms of prayer clause (a).

14. No costs.

(AMIT BORKAR, J.)