



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISCELLANEOUS CIVIL APPLICATION NO.159 OF 2023

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}

}Applicant

V/s.

NILAM
SANTOSH
KAMBLE

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SANTOSH
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}Respondent

Ms.Taubon Irani a/w Ms.Sushmita Sherigar, Ms.Disha Shetty,
for the Applicant.

Mr.Archit Jayakar a/w Ms.Boomi Upadhyay, Ms.Shivani Prasad
i/b Jaykar & Partners, for the Respondent.

CORAM : ARUN R. PEDNEKER, J.

RESERVED ON : 05th JULY 2024

PRONOUNCED ON : 09th JULY 2024

JUDGMENT :-

1. By the present Application under Section 24 of the
Code of Civil Procedure, 1908, the Applicant-Husband seeks

transfer of D.V. proceeding initiated by the Respondent-Wife for maintenance and residence order, before the Metropolitan Magistrate, 15th Court at Sewree, Mumbai to IVth Family Court, Bandra to be heard and decided along with Divorce Petition No.727 of 2022 filed by the Applicant/husband before the Bandra Family Court. The prayer (a) in the Application reads as under.

“That this Hon’ble Court be pleased to exercise its powers and jurisdiction under Section 24 of the Code of Civil Procedure, 1908 and transfer Application bearing No.CC/11/DV/2023 filed by the Respondent before the Metropolitan Magistrate’s 15th Court at Sewree, Mumbai to the 4th Family Court at Bandra, Mumbai to be heard and decided with Petition bearing No.A 727 of 2022 and a common trial be ordered.”

2. The facts leading to the filing of the Application in brief are as under:

That the Applicant married the Respondent on 7th April 2001. They have a daughter born on 29th June 2013. Due to matrimonial dispute, the Applicant has filed divorce proceeding No.A-727 of 2022 in Family Court at Bandra seeking divorce and other ancillary reliefs against the

Respondent-Wife. So also the Applicant has filed Civil Suit against Respondent's parents before the City Civil Court, Mumbai. The Respondent-Wife has thereafter filed D.V. Proceedings before the Metropolitan Magistrate under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short "DV Act") on 14th March 2023 seeking various reliefs including urgent monetary and residential reliefs as under:-

(i) Seeking her maintenance and maintenance of daughter and directing the Respondent to pay fees and expenses of the daughter including medical expenses.

(ii) Seeking residence order directing the Respondent to pay the licenses fee of the existing apartment occupied by the Respondent-Wife.

3. The matter has proceed before the Family Court so also before the Magistrate Court and the chart is produced by the Respondent as to the status of the matter before both the Courts, which is reproduced below :

Chart as produced by the Respondent/Wife.

Sr.No.	Date	Matter in Family Court	Matter in ACMM Court
1	07.04.2022	For Compliance	
2	04.05.2022	For Compliance	

3	19.05.2022	Compliance	
4	07.06.2022	Compliance	
5	08.06.2022	Counselling	
6	18.06.2022	Counselling	
7	25.08.2022	Report of the Marriage Counsellor	
8	10.11.2022	Report of the Marriage Counsellor	
9	08.02.2023	Report of the Marriage Counsellor	
10	14.03.2023		*The D.V Complaint was filed; * Interim Application under S.23 of the DV Act, was also filed ; * Notice was issued to the Respondent ; Adjourned to 17.03.23 for the Respondent's say;
11	17.03.2023		Court was Vacant
12	18.03.2023		Order to issue notice to the Respondent was passed.
13	27.03.2023		* Respondents filed their Vakalatnama; * Complainant filed a Compilation of Documents; * Complainant filed an Application for issuing a warrant to the Respondent; Matter was adjourned to 06.04.2023 fo the Respondent's say on our Application.
14	06.03.2023		The Respondents filed their say to Application for issuing a warrant ; The Respondent filed an Application challenging the maintainability of our Application for issuing a warrant; The matter was adjourned. The Respondents filed their affidavit in reply to Interim Application for maintenance ;
15	12.04.2023		Court was vacant ;
16	24.04.2023	To file Written Statement	
17	26.04.2023		Matter was adjourned
18	12.05.2023		The Respondent filed a taken

			on board application; The Respondent made an application to deposit a cheque, towards the rent payable to the landlady of the Planet Godrej Apartment;
19	23.05.2023		Respondent filed a Purshis to place on record the fact that, despite the Hon'ble High Courts order which was passed on 3 rd May 2023 – to decide on the rent issue within a period of 4 weeks from the date of the Order, the Complainant did not promptly approach this Hon'ble Court to have the hearing fixed.
20	26.05.2023		* Complainant filed a reply to the aforesaid purshis ; The Court was unable to hear the matter, hence the matter was adjourned.
21	30.05.2023		Court was vacant.
22	05.06.2023		* The Respondents filed their Compilation of Documents ; The Respondents also filed an Adjournment Application, which was allowed as a last chance for them to file their Affidavit in Reply to our Interim Application;
23	07.06.2023		The matter was argued in respect of the Rent, as per the directions contained in the Hon'ble High Court's 3 rd May 2023 Order
24	14.06.2023		The Matter was kept for orders.
25	19.06.2023		An Interim Order was passed, directing the Respondent to ; a. Directly pay of rent to the landlady of the Planet Godrej Apartment, upto December 2023 ; b. To pay the said rent on or before 5 th day of every month ; c. Look for alternate accommodation for the Complainant, as per his own standard of living ;

			To not disturb the Complainant and her daughters possession, in respect of the Planet Godrej Apartment.
26	22.06.2023	Say to Exhibit (the Petitioners say on our Interim Application for maintenance)	
27	28.06.2023		The Respondents filed their reply to the Application for correction in the aforesaid Interim order.
28	03.07.2023		Matter was adjourned.
29	11.07.2023		Matter was adjourned, by consent
30	02.08.2023		Complainant made an Application for release of rent deposited in Court, for the months of August and September.
31	05.08.2023		* The Respondents made an Application to deposit rent cheques, for the months of August and September; * Complainant filed a say to this Application ; The said Application was allowed.
32	13.09.2023		Complainant filed her Affidavit of Assets and Liabilities ;
33	12.10.2023		The Respondents made an Application to deposit rent cheques, for the month of October.
34	25.10.2023		Matter was adjourned.
35	22.11.2023		Complainant made an application for preponment of the matter before the In-charge Court, the said Application was allowed and the matter was fixed on 29 November 2023 for further consideration. A notice of preponement was also issued to the Respondent.
36	29.11.2023		Complainant advocate argued the residence application at length
37	30.11.2023		The Respondents made an

			Application to deposit rent cheques, for the month of November.
38	08.12.2023		Complainant filed an Application for taking on record a compilation of the email exchange in respect of residence.
39			Purshis was filed by the Respondent to hear the S.340 application before deciding the Interim Application for residence.
40	19.12.2023		The learned ACMM passed a handwritten Order stating that the Interim Application (for residence) and the S.340 Application would be heard at the same time. Complainant's advocated argued the Interim Application (for residence)
41	21.12.2023		The Respondent commenced arguments on the Interim Application (for residence) and tendered certain documents such as google map directions to oppose the reliefs sought by the Applicant regarding her residence. The Respondent commenced arguments on the S.340 Application. Due to paucity of time, the Ld. ACMM adjourned the matter to 6-1-24 for arguments on the S.340 Application.
42	06.01.2024		The matter was adjourned, as the Court was busy in another part heard matter.
43	30.01.2024		The Respondent filed an Application to deposit the rent cheques in Court.
44	05.02.2024	Say to Exhibit (the Petitioner's say on our Interim Application for maintenance)	
45	06.02.2024		Pursuant to the Order dated 10.01.2021 passed in Cr. WP-4018 of 2023 by the Hon'ble High Court, the Complainant filed another Interim

			Application for residence before the LD. ACMM. The Complainant also tendered an application to withdraw the rent deposited by the Respondent. The said application was opposed by the Respondent on the grounds that the Hon'ble High Court had directed the Respondent to only deposit the rent but did not permitted the Complainant to withdrawing the same.
46	07.03.2024		Court was vacant.
47	03.04.2024		The Respondent filed their reply to the Interim Application on residence filed by the Applicant. The matter has been adjourned for arguments on the said Application. Adjourned to 15.05.2024
48	07.05.2024	Say to Exhibit (The Petitioner's say on our Interim Application for maintenance)	
49	15.05.2024		Court was vacant.
50	12.06.2024		Court was vacant.

The above chart would indicate that the Family Court proceedings are at preliminary stage of report of Marriage Counselor also reply is filed in the Interim maintenance Application on 7th May 2024 and the D.V. Proceedings are listed before the Metropolitan Magistrate over 40 dates.

Submission of Applicant :-

4. The learned counsel for the Applicant **Ms. Taubon Irani** submits that this Court (Single Judge) has consistently

taken the view that proceedings instituted under Section 12 of the Protection from Domestic Violence Act, 2005 before the Magistrate can be transferred to the Family Court in exercise of powers conferred under Section 24 of the C.P.C.

Note -1 - See *Sandip Mrinmoy Chakrabarty v. Reshita Sandip Chakrabarty*, 2018 SCC OnLine Bom 2709;

Santosh Machindra Mulik v. Mohini Mithu Choudhari, 2019 SCC OnLine Bom 13101;

Hitesh Prakashmalji Mehta v. Aashika Hitesh Mehta, Misc. Civil Application (St.) No.788 of 2020 decided on 28th September 2020;

Harsherekha Ajay Garg & Anr. v. State of Maharashtra & Anr., Criminal Appeal No.1817 of 2022 decided on 26th September 2022;

Sanket Sanjeev Khanolkar v. Surabhi Sanket Khanolkar, 2021 SCC Online Bom 5234; and *Minoti Subhash Anand v. Subhash Manoharlal Anand*, 2015 SCC OnLine Bom 6113.

5. It is contention of the Applicant that the D.V. Proceeding so also Divorce Proceeding be taken up together as it involves common evidence and that there should not be conflict of judgments on same evidence between the same parties. The learned counsel for the Applicant submits that the law is well settled by this Court that the D. V. Proceeding initiated by the wife can be transferred to the Family Court and

on transfer the Family Court which is already seized with the divorce matter can grant all the reliefs which the wife has prayed for in the D.V. Proceedings and both the proceedings can be heard and tried together so as to avoid conflict of decision by the different Courts on the same facts.

Submission of Respondent :-

6. Per contra, the learned counsel **Mr. Archit Jayakar** appearing for the Respondent/Wife submits that the Applicant has a right to either initiate D. V. proceeding under Section 12 before the Magistrate or under Section 26 before the Family Court in the pending proceedings and the right of an Respondent/Wife cannot be scuttled by transfer of proceedings from the Magistrate Court to the Family Court. The D.V. Proceedings before the Magistrate under Section 12 are summary in nature and although urgent reliefs of maintenance and residence required, the Applicant-Husband has been able to stall even the grant of interim relief in the D.V. Proceedings.

. He further submits that this Court has allowed the D.V. Proceedings filed before the Magistrate under Section 12

to be transferred to the Family Court. However, he submits that the law settled by his Court as regards transfer of D. V. proceedings from Magistrate Court to the Family Court needs reconsideration as judgments of this do not taken into consideration the nature of the proceedings on transfer are converted from Criminal to Civil proceedings.

7. The learned counsel further submits that on transfer, the Application under Section 12 of the D.V. Act filed before the Magistrate is converted into an Application under Section 26 of the D.V. Act before the Family Court in the exercise of the power of Section 24 of the C.P.C. by this Court. He also submits that other High Courts have taken the view that the Application under Section 12 is within exclusive jurisdiction of the Magistrate and thus cannot be transferred to the Family Court to be entertained under Section 26 of the D. V. Act. He has also raised various other arguments in this regard.

8. Alternatively, he submits that in the fact situation till date the Respondent-Wife along with her daughter has no

interim relief in her favour and she has been borrowing and surviving from her family and the Applicant is incurring huge expenditure in litigation also making the Respondent to incur expenditure by borrowing to defend the proceeding before this Court. The Applicant has not offered interim maintenance to her and their daughter. The Application for transfer is not *bona fide* and is only for the purpose of delaying the maintenance order and residence order in the D.V. Proceedings.

Consideration :-

9. This Court has held that the High Court in exercise of power under Section 24 of the C.P.C. can transfer an Application filed under Section 12 of the D.V. Act before the Magistrate Court to the Family Court. This Court has also consistently rejected the arguments to refer the issue of transfer of D. V. Proceedings under Section 12 from Magistrate Court to the Family Court, to the larger Bench of this Court and thus to maintain judicial discipline, I would not consider the arguments of the learned counsel afresh to refer the matter to the larger bench. Reference be made to following judgment of this

Court:-

a) Vijay Suryakant Kakde vs. Anushka Vijay Kakde (MCA NO.498 OF 2022) Dated 02.02.2023.

b) Rohan Shah Vs. Nishigandha Shah (MCA No.477 of 2022) Dated 20.12.2023.

10. Although this Court has held that it has the jurisdiction to transfer D. V. Proceedings initiated under Section 12 before the Magistrate to the Family Court, this Court has to be judicious and careful in exercising the power of the transfer for the reason that the proceedings under the D.V. Act are summary in nature and has to be completed within certain time frame and urgent reliefs are required to be obtained by the wife for residence and maintenance. I find that in the present matter the proceedings are pending for the long period of time before the Magistrate Court. Although there is no stay granted by this Court to the D.V. Proceedings, there are no interim orders of maintenance or residence passed by the Magistrate Court. The chart produced by the Respondent at paragraph 3 above, would indicate that the Family Court proceedings are at preliminary stage of report of Marriage

Counselor with reply being filed in the interim relief application and the matter is listed before the Magistrate Court for over 40 times. The Respondent-Wife has custody of the school going daughter and no interim maintenance order is passed although the matter is listed before the Magistrate over 40 hearings, as such, the purpose of the D. V. Act is frustrated. The Applicant-Husband is fiercely contesting the maintenance proceedings before the Magistrate and has not offered maintenance before the Magistrate Court even to their minor school going daughter. Transfer of D. V. proceedings from Magistrate Court to the Family Court would further aggravate the situation of the wife and the minor daughter.

11. As regards the arguments of conflict of the orders that may passed in the pending proceedings before Magistrate Court and the Family Court the Hon'ble Supreme Court in the case of *Satish Chander Ahuja V/s. Sneha Ahuja*¹, at paragraph 166 has dealt with the issue of conflict of order under D.V. Act and Civil Court and has held as under:-

166. From the above discussions, we arrive at following

¹ (2021) 1 Supreme Court Cases 414

conclusions:-

166.1. *The pendency of proceedings under Act, 2005 or any order interim or final passed under D.V. Act under Section 19 regarding right of residence is not an embargo for initiating or continuing any civil proceedings, which relate to the subject matter of order interim or final passed in proceedings under D.V. Act, 2005.*

166.2. *The judgment or order of criminal court granting an interim or final relief under Section 19 of D.V. Act, 2005 are relevant within the meaning of Section 43 of the Evidence Act and can be referred to and looked into by the civil court.*

166.3. *A civil court is to determine the issues in civil proceedings on the basis of evidence, which has been led by the parties before the civil court.*

12. The Supreme Court in the case of ***Satish Chander Ahuja (Supra)*** has held that both the proceedings can proceed parallelly and the orders passed in the earlier D.V. proceeding have to be taken into consideration by the Civil Court while passing final order. The Hon'ble Supreme Court in the case of ***Ramesh vs. Neha (2021 (2) SCC 324)*** on the aspect of overlapping jurisdiction and to avoid conflicting orders being passed in different proceedings has directed as under:-

“3. Directions on overlapping jurisdictions

60. *It is well settled that a wife can make a claim for maintenance under different statutes. For instance, there is no bar to seek maintenance both under the D.V. Act and Section 125 of*

the Cr.P.C., or under H.M.A. It would, however, be inequitable to direct the husband to pay maintenance under each of the proceedings, independent of the relief granted in a previous proceeding. If maintenance is awarded to the wife in a previously instituted proceeding, she is under a legal obligation to disclose the same in a subsequent proceeding for maintenance, which may be filed under another enactment. While deciding the quantum of maintenance in the subsequent proceeding, the civil court/family court shall take into account the maintenance awarded in any previously instituted proceeding, and determine the maintenance payable to the claimant.

61. *To overcome the issue of overlapping jurisdiction, and avoid conflicting orders being passed in different proceedings, we direct that in a subsequent maintenance proceeding, the applicant shall disclose the previous maintenance proceeding, and the orders passed therein, so that the Court would take into consideration the maintenance already awarded in the previous proceeding, and grant an adjustment or set-off of the said amount. If the order passed in the previous proceeding requires any modification or variation, the party would be required to move the concerned court in the previous proceeding.”*

13. The Hon’ble Supreme Court in the case of Ramesh (Supra) has directed to overcome the issue of overlapping jurisdiction and to avoid conflicting orders being passed in different proceedings, the Claimant in the subsequent maintenance proceedings shall disclosed the previous

maintenance proceedings and the orders passed thereto so that the Court would take maintenance already awarded in the previous proceedings and grant an adjustment of the said amount. Conflict has to be thus judicially managed applying the principles laid down by the Supreme Court in the case of *Satish Chander Ahuja (Supra) and Ramesh V/s. Neha (Supra)*.

14. Question of conflict, if any, should not be used to the prejudice of the wife and minor daughter seeking urgent maintenance and residence order. The transfer of D. V. proceeding from Magistrate court to the Family Court would further delay the proceedings. There is no bar to seek maintenance both under the D.V.Act and the Hindu Marriage Act and that she has to only disclose the earlier proceedings and maintenance order passed in the subsequent proceedings so as to avoid conflict of orders. The conflict between the orders passed by the Magistrate under the D.V. Act and the Civil Courts entertaining divorce petitions [where the Family Courts are not established and the Divorce Proceeding are filed before the Civil Court] are resolved in routine course applying the

principles of *Ahuja's case (Supra) and Ramesh V/s. Neha (Supra)*. It is the choice of the wife to file D.V. proceedings before the Magistrate under Section 12 or under Section 26 in the pending proceedings. When this Court exercise the power of transfer under Section 24 of the CPC, this Court takes away the wifes right to choose the forum and the exercise of powers of transfer is fraught with danger, the first causality being expeditious disposal of Section 12 application by the Magistrate. Transfer application should be entertained only to meet ends of justice and care should be taken to ensure that the wife and children are not deprived of immediate maintenance and residence orders. The power of transfer can also exercised to prevent abuse of process of law.

15. If conflict of judgment on same facts and between the same parties is the sole ground of transfer, every transfer petition filed by the husband will have to be allowed by this Court making the choice of wife to approach the Magistrate meaningless. The choice available to the wife file application either under section 12 or under Section 26 of the D.V. Act

would be rendered nugatory. In the Application under Section 12, the Magistrate is required to make an endeavour to decide it in 60 days, whereas if a transfer petition is entertained by this Court it consumes substantial time rendering the mandate of Section 12 of expeditious disposal nugatory.

16. In the motion moved in the Parliament to pass the D.V. Act 2005, the Hon'ble Minister in response to the concern raised by an *anshu* as regards the limited time granted to the magistrate to decide the D.V. Application had responded as under:

“Shrimati Sumitraji is not present here. She said that the duration of 60 days is very less. But it has been mentioned in the bill that magistrate shall try to dispose of the case within 60 days. Since this is an emergency law, therefore, it becomes necessary to set a time limit so that unnecessary delay may be avoided.”²

Thus this Court should be slow in entertaining the application under Section 24 of the CPC to transfer application under Section 12 of the D.V. Act instituted by the wife before

² Lok Sabha debates Fourteenth Series Vo.XIII, No.21 dated August 24, 2005

the Magistrate to the Family Court.

17. The Supreme Court in a case of *Mohammed Danish Abdul Wahab & Ors. V/s. Farjana Mohammed Danish & Ors. reported in 2024 SCC Online SC 1435*” where transfer was sought of proceedings under the D.V. Act to the Family Court, has passed following order:-

“1. The Petitioner No.1 who is the husband seeks transfer of the pending proceedings initiated under the Protection of Women from Domestic Violence Act, 2005. As the said proceedings being summary in nature where the legislature has consciously given an outer limit, we are not inclined to allow this Transfer Petition, instead we direct the Judicial Magistrate First Class, Bhivandi, Thane, Maharashtra to dispose of PWDVA No.51 of 2016 within a period of eight weeks from today.

2. The Transfer Petition, is accordingly, dismissed.

ORDER

18. I would also pass similar order in this petition. It is directed that Metropolitan Magistrate, 15th Court at Sewree, Mumbai to decide the Application bearing No.CC/11/DV/2023 within 60 days from the date of production of this order, in terms of mandate of Section 12(5)

of the D. V. Act.

19. The Miscellaneous Application is dismissed, with cost of Rs.10,000/- to be paid to Respondent wife within two weeks.

(ARUN R. PEDNEKER, J.)