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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISCELLANEOUS CIVIL APPLICATION NO.124 OF 2024

Suprabha Nitesh Patil @ Suprabha Anant Kot)
Age -27 years, Occu-Housewife)
R/o. Janai Dham, Room No.177,)
Chatrapati Shivaji Chowk,)
Mohone Koliwada, Tal. Kalyan,)
Dist. Thane – 412 102)
(M) 9082929930 … Applicant

V/s.

Nitesh Gajanan Patil)
Age – 33 years, Occu. Service)
R/at 26/7, Koli Samaj Co-Op.)
Hsg. Soc. Sweree, Koliwada,)
Sewree (East), Mumbai – 400 015. … Respondent

WITH

MISCELLANEOUS CIVIL APPLICATION NO.415 OF 2024

Nitesh Gajanan Patil)
Age – 33 years, Occu. Service)
R/at 26/7, Koli Samaj Co-Op.)
Hsg. Soc. Sewaree, Koliwada,)
Sewaree (East), Mumbai – 400 015. ... Applicant

V/s.

Suprabha Nitesh Patil @)
Suprabha Anant Khot,)
Age -27 years, Occupation – Housewife,)

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R/o. Janai Dham, Room No.177,)
Chatrapati Shivaji Chowk,)
Mohan Koliwada, Tal. Kalyan,)
Dist. Thane – 412 102 ... Respondent

Mr. Yuvraj A. Tajane, Advocate for the Applicant in MCA/124/2024 and for the Respondent in MCA/415/2024.

Mr. Manoj Kondekar a/w Mr. Kiran Mohite and Ms. Deepika Mule i/by Kiran Mohite for Respondent in MCA/124/2024 and Applicant in MCA/415/2024.

CORAM : RAJESH S. PATIL, J.

Reserved On : 10th September 2025
Pronounced On : 10th October 2025

JUDGMENT :

1) Both the Husband and Wife have filed Miscellaneous Civil Applications for transfer of the proceedings. Wife is seeking a relief of transfer of Husband's petition from Family Court at Bandra to Civil Judge, Senior Division, Kalyan and the Husband is seeking transfer of petition filed by the wife before Civil Judge, Senior Division, Kalyan to the Family Court at Bandra. In order to avoid conflicting judgments, it is necessary to club the petitions, hence either the petition filed by the Husband for transfer has to be allowed or else the petition filed by the wife has to be allowed.

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2) Factually, there is no dispute that the Husband has first filed divorce petition on 5th December 2022 before the Family Court at Bandra, Mumbai. The wife thereafter on 14th December 2022 filed a divorce petition before the Civil Judge, Senior Division, Kalyan. The wife is residing with her parents and elder brother at Ambivali, Kalyan and the Husband is staying at Sewree, Mumbai. The distance between the two places is around 50 kms. The Husband is working in the Sales Department in Nexa Showroom in Mumbai and the wife is a Homemaker.

3) Learned Advocate appearing for the Husband has referred to the provisions of Section 21-A of the Hindu Marriage Act, 1955 and has argued that the said provisions are clear and more particularly sub-Sections (1) (a) and (2) (b) of Section 21-A. Therefore, according to him, there is no option but to transfer proceeding filed by the wife to the Family Court at Bandra, Mumbai, where the proceeding filed by the husband is pending.

4) Learned Advocate appearing for the wife has referred to the judgment delivered by the Supreme Court in case of ***N.C.V. Aishwarya Vs. A. S. Saravana Karthik Sha***, reported in ***2022 SCC OnLine SC 1199*** and the judgment delivered by Single Judge of Bombay High Court in case of ***Yogini Umesh Chivhane Vs. Umesh Uttamrao Chivhane*** reported in ***(2004) 5 Bom CR 901*** and submitted that in transfer proceedings, it

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is the convenience of the wife which has to be considered and hence, the Miscellaneous Civil Application of the wife has to be allowed and the Miscellaneous Civil Application of the husband has to be rejected. It is further submitted that the provision of Section 24 of the Code of Civil Procedure overrides Section 21A of the Hindu Marriage Act.

5) I have heard counsel for both the sides and have gone through the documents on record. It is necessary first to consider the provisions of Section 21-A of the Hindu Marriage Act, 1955, which deals with power to transfer petitions and directs their joint or consolidated trial "in certain cases" only. The said Section reads as under :-

21-A. Power to transfer petitions in certain cases.- (1) Where-

(a) a petition under this Act has been presented to a district Court having jurisdiction by a party to a marriage praying for a decree for judicial separation under section 10 or for a decree of divorce under section 13, and

(b) another petition under this Act has been presented thereafter by the other party to the marriage praying for a decree for judicial separation under section 10 or for a decree of divorce under section 13 on any ground, whether in the same district Court or in a different district Court, in the same State or in a different State,

the petitions shall be dealt with as specified in sub-section (2).

(2) In a case where sub-section (1) applies,-

(a) if the petitions are presented to the same district Court, both the petitions shall be tried and heard together by that district Court,

(b) if the petitions 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.

(3) In a case where clause (b) of sub-section (2) applies, the Court or

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the Government, as the case may be, competent under the Code of Civil Procedure, 1908 (5 of 1908), to transfer any suit or proceeding from the district Court in which the later petition has been presented to the district Court in which the earlier petition is pending, shall exercise its powers to transfer such later petition as if it had been empowered so to do under the said Code.

6) In comparison, Section 24 of the Code of Civil Procedure, 1908 (C.P.C.), deals with general power of transfer of proceedings by the High Court or the district court. Section 24 of the C.P.C. reads as under :-

24. General power of transfer and withdrawal

(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion, without such notice, the High Court or the District Court may, at any stage-

(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it; and

(i) try or dispose of the same; or

(ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or

(iii) re-transfer the same for trial or disposal to the Court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn under sub-section (1), the Court which "[is thereafter to try or dispose of such suit or proceeding] may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

[(3) For the purposes of this section,-

(a) Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court;

(b) "proceeding" includes a proceeding for the execution of a decree

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or order.]

(4) The Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

[(5) A suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it.]

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

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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.

8) In the Judgment of ***N.C.V. Aishwarya*** (supra), the Supreme Court categorically held that, what has to be seen in transfer proceedings is the convenience of wife. However, the proceedings before the Supreme Court were not under Section 21A of the Hindu Marriage Act. The proceedings in that case arose under Sections 9 and 12 of the Hindu Marriage Act and also under Section 125 of the Criminal Procedure Code. Therefore the ratio of this decision will not be applicable to the present proceedings.

Para No.9 of 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 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,*

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> *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)

8.1) In case of ***Yogini Chivhane*** (supra) the learned Single Judge has considered the facts where there was a difference of only one day between the Marriage Petitions filed by the husband and wife. The wife had also filed application for maintenance under Section 125 of Criminal Procedure Code at the place where her parents resided. Considering the judgment of Supreme Court in case of ***Guda Vijayalakshmi Vs. Guda Ramchandra Sekhara Sastry*** reported in ***(1981) 2 SCC 646***, the learned Single Judge transferred the proceedings of husband to the Court where the wife's petition for divorce was pending, considering the facts of the said case. Para No.6 of the said judgment read as under:-

> *6. The Apex Court had an occasion to deal with section 21-A of the Act in the case of Guda Vijayalakshmi, cited (supra), wherein it is held that the provisions of section 21-A of the Act are not exhaustive and the Court can exercise and take resort to the provisions of sections 23 to 25 of the code of Civil Procedure for directing transfer of the petitions for consolidated hearing. It was further held be the Apex Court that where a wife filed petition for judicial separation under section 10 of the Act and by the husband for restitution of conjugal rights under*

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> *section 9 in courts in two different States, it will invariably be expedient to have a joint or consolidated hearing or trial of both the petitions by one and the same Court in order to avoid conflicting decisions being rendered by two different courts and in such a situation resort will have to be had to the powers under sections 23 to 25 of the Code of Civil Procedure for directing transfer of the petitions for a consolidate hearing.*

(Emphasis supplied)

8.2) Supreme Court in case of ***Guda Vijayalakshmi*** (supra) was considering the facts where wife's suit was filed first in time seeking maintenance from husband in the Court of Sub-ordinate Judge, Eluru (Andhra Pradesh). On receipt of notice of the suit, the husband filed divorce suit against wife under Section 13 of the Hindu Marriage Act, in District Court, Udaipur (Rajasthan). By filing Petition in Supreme Court under Section 25 of C.P.C., wife sought transfer of husband's suit to District Court at Eluru (Andhra Pradesh), and she was agreeable to have her maintenance suit transferred to the District Court at Eluru (Andhra Pradesh). On merits, the Supreme Court allowed wife's petition filed under Section 25 of the Code of Civil Procedure, and transferred the husband's divorce suit from Rajasthan to the District Court, Eluru (Andhra Pradesh). Paragraph nos. 4 and 9 of the said judgment reads as under :-

> 4. So far as Section 21-A of the Hindu Marriage Act is concerned the marginal note of that section itself makes it clear that it deals with power to transfer petitions and direct their joint or consolidated trial "in certain cases" and is not exhaustive.

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Further sub-section (3) of Section 21-A on which strong reliance was placed runs thus:

> "21-A. (3) In a case where clause (b) of sub-section (2) applies, the Court or the Government, as the case may be, competent under the Code of Civil Procedure, 1908 (5 of 1908) to transfer any suit or proceeding from the District Court in which the later petition has been presented to the District Court in which the earlier petition is pending, shall exercise Its powers to transfer such later petition as if it had been empowered so to do under the said Code."

This provision in terms deals with the power of the government or the court on whom powers of transfer have been conferred by the CPC as it then stood, that is to say, old Sections 24 and 25 of CPC. It does not deal with the present Section 25, CPC which has been substituted by an amendment which has come into force with effect from February 1, 1977 (Section 11 of the Amending Act 104 of 1976). By the amendment very wide and plenary power has been conferred on this Court for the first time to transfer any suit, appeal or other proceedings from one High Court to another High Court or from one civil court in one State to another civil court in any other State throughout the country. Conferral of such wide and plenary power on this Court could not have been in the contemplation of Parliament at the time of enactment of Section 21-A of Hindu Marriage Act, 1955. It is, therefore, difficult to accept the contention that Section 21-A of Hindu Marriage Act excludes the power of transfer conferred upon this Court by the present Section 25 of CPC in relation to proceedings under that Act.

9. Section 21-A of the Hindu Marriage Act, in my opinion, has indeed no bearing on the question of jurisdiction conferred on this Court under Section 25 of the Code of Civil Procedure. Section 21-A of the Hindu Marriage Act makes provisions for transfer of petitions specified in the said section and for hearing and disposal of such petitions together by the district court in which the earlier

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> petition has been presented. Such power has been conferred on the court or the government. Section 21-A has no application to the case of transfer of any suit or proceeding from one State to another. As I have earlier noted, very wide power and jurisdiction have been conferred on this Court in the interest of justice for transferring any appeal, suit or proceeding from one State to another under Section 25 of the Code of Civil Procedure. In the instant case, the petitioner has applied for transfer of the suit pending in the District Court at Udaipur in the State of Rajasthan to the appropriate Court at Eluru in the State of Andhra Pradesh. I am, therefore, of the opinion that this Court enjoys the power and jurisdiction to entertain this application under Section 25 of the Code of Civil Procedure and Sections 21 and 21-A of the Hindu Marriage Act do not, in any way, exclude, affect or curtail the power conferred on this Court under Section 25 of the Code of Civil Procedure. I may incidentally add that the present Section 25 in the Code of Civil Procedure came into force after Sections 21 and 21-A had been incorporated in the Hindu Marriage Act, 1955.

8.3) After the amendment to C.P.C. in the year 1976, Supreme Court got power to transfer proceedings, when the provision of Section 21A of Hindu Marriage Act, was already in existence. Therefore, the observations made in this judgment will have no bearing to the present proceedings, wherein the application of husband is specifically filed under Section 21A of the Hindu Marriage Act and under Section 24 of C.P.C.

8.4) The Supreme Court in the case of ***Sumita Singh Vs. Kumar Sanjay,*** reported in ***(2001) 10 SCC 41,*** was not considering the provisions of Section 21-A of the Hindu Marriage Act. In the said proceedings, the

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wife had filed application for transfer of matrimonial proceeding filed by the husband in Ara, Bhujpur, to Delhi, where she was living and working. Distance between two places was around 1100 kms. Considering the convenience of wife, the husband's matrimonial proceedings were transferred. The observations made in case of ***Sumita Singh*** (supra), therefore will not be applicable to the present proceedings.

8.5) Similarly Single Judge of this Court in the Judgment of ***Anisha Sanjay Hinduja Vs. Sanjay Shrichand Hinduja*** reported in ***2003 (Supp.) Bom. C.R. 802***, the learned Single Judge was considering the facts where the husband had filed petition for nullity of marriage. Thereafter, wife filed petition for maintenance. Therefore, the provisions of Section 21-A of Hindu Marriage Act, were not into play.

9) In the present proceedings, the distance between Kalyan, where the wife resides and the Family Court, Bandra, Mumbai is approximately 50 km. Therefore, it will be possible for the wife to travel to and fro, to attend Court proceedings on the same day. Further the husband has agreed to bear the travelling expenses of wife for each day of hearing, the inconvenience caused to wife monetarily can be taken care of, by directing the husband to pay the said charges.

10) Hence the Miscellaneous Civil Application No. 124 of 2024 filed

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by the Wife stands **rejected** and the Miscellaneous Civil Application No. 415 of 2024 filed by the Husband stands **allowed** in terms of prayer **clause (a).**

10.1) The Civil Judge, Senior Division, Kalyan will transfer the proceedings of HMP No. 2159 of 2022, to the Family Court at Bandra, Mumbai, within four weeks from today.

10.2) HMP No. 2159 of 2022, be tagged alongwith Marriage Petition No. 3540 of 2022, pending before the Family Court at Bandra, Mumbai. Both the Petitions be heard together by one and the same Judge.

10.3) The hearing of both petitions is expedited.

10.4) The husband will pay a sum of Rs.2,500/- per date of hearing attended by the wife physically in Court, in advance of atleast 48 hours.

10.5) Wife also has a liberty to attend court proceedings through Video Conferencing, and whenever felt necessary by the Judge hearing both the Marriage Petitions, the wife would have to attend the court proceedings physically appearing before the Court.

(RAJESH S. PATIL, J.)

11) At this stage, Mr.Tajane, learned advocate for the Applicant in MCA/124/2024 prays for continuation of *ad-interim* relief for four weeks. Mr.Kondekar, learned advocate for the respondent in

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MCA/124/2024 has opposed this request.

12) Considering the facts of the present case, the request made by Mr.Tajane is rejected.

(RAJESH S. PATIL, J.)

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