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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

MISCELLANEOUS CIVIL APPLICATION NO.92 OF 2015

Kalimabegum s/o Shaikh Taher APPLICANT
Age - 45 years, Occ - Household,
R/o Plot No. 45, N-13/A,
Himayatbagh, In front of Maulana Azad College,
Aurangabad

VERSUS

Shaikh Taher Shaikh Pasha RESPONDENT
Age - 50 years, Occ - Meter Reader
R/o Near Hospital of Dr. Pradeep Joshi,
Asef nagar, Beed,
Taluka and District - Beed

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Mrs. A. N. Ansari, Advocate for the applicant
Mr. Sayyed Tauseef, Advocate for the respondent

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 25th JANUARY, 2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.
2. Learned advocate for the applicant submits that on the verge of commencement of SSC examination of second daughter, the applicant had been driven out of the house by the respondent - husband and she with great strain and difficulty had taken the daughter from Aurangabad to Beed to attend to

the examination. It is further being submitted that the couple's first daughter is a medical practitioner at Aurangabad and the third child is also taking education at Aurangabad. Learned advocate for the applicant goes on to submit that it would be very difficult for the applicant to attend to the proceedings initiated by the respondent for restitution of conjugal rights at Beed as she perceives threats and further contends that she is a *parda nashin* lady.

3. Learned advocate for the respondent, however, submits that aforesaid difficulties can be taken care of and that the respondent is ready to bear expenses of journey of the applicant from Aurangabad to Beed and back. It is contended by learned advocate for the respondent that the respondent has suffered two accidents and in one he lost his right eye and in another he got his leg fractured and as such, he is a handicapped person. Having regard to aforesaid it is earnestly requested by learned advocate for the respondent that the proceedings be maintained at Beed.

4. Learned advocate for the respondent further submits that there cannot be hard and fast rule that the proceedings be transferred to a place where the wife is residing. He, for said

purpose places reliance on a judgment reported in (2006) 9 SCC 197 "*Anindita Das V/s Surjit Das*", wherein the Supreme Court has considered that leniency shown to women is often being misused and taken disadvantage of and in the peculiar circumstances involved in the case, considered that there was no ground for transfer of proceedings. In the other case reported in (1996) 11 SCC 96, "*Kalpna Deviprakash Thakar V/s Dr.Deviprakash Thakar*", the Supreme Court, having regard to relevant factors disallowed the transfer petition. In that case, it appears that the respondent - husband was a medical practitioner and his absence from Mumbai was causing difficulty, his old and ailing mother was in Mumbai and the witnesses were to be principally from Mumbai and the wife had some near relations in Mumbai. Additionally, the husband had undertaken to bear traveling expenses of wife along with that of the escort. It was in those circumstances, the court had refused to transfer the case. In the circumstances, It cannot be said that the Supreme Court, intended to lay down any principle of law as such.

5. In view of the circumstances as are appearing and having stated that the applicant and her three daughters one is doctor and other two are taking education are residing at Aurangabad, plus the threat perceived at Beed by the applicant, will have to

be taken into account. It does not appear that any serious prejudice would be caused to the respondent if he attends proceedings at Aurangabad, as he is stated to be a meter reader in Maharashtra State Electricity Distribution Company Limited for which he requires some movement. It is not stated that the husband cannot undertake any journey at all.

6. Having regard to aforesaid and further that the applicant being a lady and a *parda nashin* lady, it may not cause any prejudice to the respondent - husband, if he undertakes travel from Beed to Aurangabad to attend the dates in the proceedings. the proceedings be transferred to family court at Aurangabad. Family Court at Aurangabad to proceed with the proceedings as expeditiously as possible and disposed of the same within a period of six months from today. The dates shall be fewer ones having regard to contention that respondent has suffered accident twice.

7. Miscellaneous civil application as such, stands allowed. Rule is made absolute in terms of prayer clause "B".

[SUNIL P. DESHMUKH, J.]