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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

MISCELLANEOUS CIVIL APPLICATION NO.162 OF 2015

Kavita Pushkar Kodilkar
Age - 32 years, Occ - Nil
R/o Samarth Nagar,
Opp Cotton Market, Dhule Road,
Amalner, Taluka - Amalner
District - Jalgaon

APPLICANT

VERSUS

Pushkar Prakash Kodilkar
Age - 37 years, Occ - Service
R/o 401, J-Wing, Shri Sai Pooja,
Yashraj Park, Ghodbandar Road,
Kasarvadavali, Thane (W)

RESPONDENT

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Mr. Girish S. Rane, Advocate for the applicant
Mr. P. P. Patni h/f Mr. P. F. Patni, Advocate for the respondent

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 11th JANUARY, 2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.
2. This is an application by wife for transfer of Marriage Petition No. A-324 of 2015 filed by respondent - husband for divorce under section 13 (1) (i-a) and (i-b) of the Hindu Marriage Act, 1955 in family court at Thane to Amalner, district - Jalgaon.

The applicant herself has instituted two proceedings, bearing Miscellaneous Criminal Application No.49 of 2015 and Hindu Marriage Petition No.174 of 2015 in the courts at Amalner. The respondent has already been appearing in the proceedings at Amalner.

3. Though it is being contended on behalf of the respondent that since the court at Thane cannot be exactly said to be a court subordinate in the territorial area of operation of Aurangabad Bench, one may have to take note of the observations in paragraph No.17 of the judgment reported in 2009 (1) Mh.L.J. 303 "*Sangamitra Ramakant Royalwar V. Ramakant Gangaram Royalwar*". It may also have to be considered that it is not the case and it cannot be said that the court at Thane is not subordinate to High Court. In the face of aforesaid, the decision, which is as old as of 1954 reported in AIR 1954 Allahabad 28 "*Basheshwar Nath V. State*", may not exactly be said to assist the respondent in present case wherein it is contended to have been observed that the application may not be entertained by a bench from a court which falls within territorial jurisdiction of principal seat. The judgment appears to have been rendered with reference to Uttar Pradesh High Court (Amalgamation) Order (1948), which may not hold in the present matter.

4. Even otherwise, looking at the provisions, especially, amended provisions of section 19 of the Hindu Marriage Act and the observations as appearing in paragraph 17 of the judgment reported in "*Sangamitra Ramakant Royalwar V. Ramakant Gangaram Royalwar*" (*supra*), it may not be proper to say that miscellaneous application may not be entertained by this court.

5. Having regard to that there are two proceedings, which the husband is already facing at Amalner and other difficulties as have been expressed in the application, it would be expedient that Marriage petition No. A -324 of 2015 pending in the Family Court at Thane be transferred to the court of Civil Judge Senior Division at Amalner in Jalgaon district.

6. Accordingly, the miscellaneous civil application is allowed in terms of prayer clause "A" and stands disposed of. Rule is made absolute in aforesaid terms.

[SUNIL P. DESHMUKH, J.]