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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

MISC. CIVIL APPLICATION NO.7 OF 2017

Vaishali w/o Ravindra Dongre,
Age : 29 years, Occupation - Housewife,
R/o Dewalai Chowk, Manjit Pride Glory,
A-2, Plot No.2, Aurangabad,
Tal and District – Aurangabad ..APPLICANT

VERSUS

Ravindra s/o Pralhadrao Dongre,
Age : 36 years, Occupation – Service as
Civil Engineer in MSEB,
R/o Tapowan, Flat No.01,
Arush Enclave Building,
First Floor, Panchsheel Chowk,
Amravati, Tal and District
Amravati ..RESPONDENT

Mr B.K. Patil, Advocate for applicant;
Mr Kalyan V. Patil, Advocate for respondent

CORAM : NITIN W. SAMBRE, J.

DATE : 28th September, 2017

ORAL ORDER:

Leave to amend. Amendment be carried out forthwith.

2. Mr Kalyan Patil, learned Counsel appearing on behalf of the respondent has opposed the prayer of the applicant for transfer of proceedings, relying upon the judgment of the Apex Court, in the matter of **Krishna Veni Nagam vs. Harish Nagam**, reported in **(2017) 4 Supreme Court Cases 150**, particularly paragraphs 9, 11 and 13 of the said judgment, which read thus :-

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“9. Spirit behind the orders of this Court in allowing the transfer petitions filed by wives being almost mechanically allowing is that they are not denied justice on account of their inability to participate in proceedings instituted at a different place on account of difficulty either on account of financial or physical hardship. Our Constitutional scheme provides for guaranteeing equal access to justice[5], power of the State to make special provisions for women and children[6] and duty to uphold the dignity of women[7]. Various steps have been taken in this direction[8].

11. Accordingly, we have heard Shri C.A. Sundaram, learned senior counsel as amicus curiae. Learned amicus has suggested that [Section 19](#) of the Act should be interpreted to mean that the jurisdiction at the place other than where wife resides being available only at the option of the wife or that such jurisdiction will be available in exceptional cases where the wife is employed and the husband is unemployed or where the husband suffers from physical or other handicap or is looking after the minor child. Even though we are unable to give such interpretation in the face of plain language of statute to the contrary and it is for the legislature to make such suitable amendment as may be considered necessary, we are certainly inclined to issue directions in the interest of justice consistent with the statute.

13. We have considered the above suggestions. In this respect, we may also refer to the doctrine of forum non conveniens which can be applied in matrimonial proceedings for advancing interest of justice. Under the said doctrine, the court exercises its inherent jurisdiction to stay proceedings at a forum which is considered not to be convenient and there is any other forum which is considered

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to be more convenient for the interest of all the parties at the ends of justice. In *Modi Entertainment Network and anr. v. W.S.G. Cricket Pte. Ltd.*[9] this Court observed: “19. In *Spiliada Maritime* [10]case the House of Lords laid down the following principle:

“The fundamental principle applicable to both the stay of English proceedings on the ground that some other forum was the appropriate forum and also the grant of leave to serve proceedings out of the jurisdiction was that the court would choose that forum in which the case could be tried more suitably for the interest of all the parties and for the ends of justice.” The criteria to determine which was a more appropriate forum, for the purpose of ordering stay of the suit, the court would look for that forum with which the action had the most real and substantial connection in terms of convenience or expense, availability of witnesses, the law governing the relevant transaction and the places where the parties resided or carried on business. If the court concluded that there was no other available forum which was more appropriate than the English court, it would normally refuse a stay. If, however, the court concluded that there was another forum which was *prima facie* more appropriate, the court would normally grant a stay unless there were circumstances militating against a stay. It was noted that as the dispute concerning the contract in which the proper law was English law, it meant that England was the appropriate forum in which the case could be more suitably tried.” Though these observations have been made in the context of granting anti suit injunction, the principle can be followed in regulating the exercise of jurisdiction of the court where proceedings are instituted. In a civil proceeding, the plaintiff is the *dominus litis* but if more than one court has jurisdiction, court can determine which is the

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convenient forum and lay down conditions in the interest of justice subject to which its jurisdiction may be availed.”

3. Mr Kalyan Patil has also expressed desire of the respondent to bear reasonable conveyance charges and out of pocket expenses of the applicant.

4. Considered submissions made by Mr Kalyan Patil for opposing the prayer of the applicant.

5. It is not in dispute that the applicant is custodian of a minor daughter born out of wedlock, who is 1-1/2 years old. The applicant has already lost her father and is staying with her old ailing mother.

6. In the aforesaid background, the claim of the respondent-husband that the prayer for transfer be rejected as he is ready to bear conveyance charges of the applicant, in my opinion, does not appear to be appealing.

7. In the above circumstances, considering the hardship and inconvenience that would be faced by the applicant, in my opinion, the present application needs to be allowed. Accordingly, Misc. Civil Application stands allowed in terms of prayer clause (B).

(NITIN W. SAMBRE, J.)

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