

(1)

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

MISC. CIVIL APPLICATION NO.44 OF 2017

Monika w/o Hemant Kabra,
Age: 27 years, Occ: Household,
R/o. C/o. Manmohan s/o Lalchand
Lahoti, Sarafa Bazar, Bhajje Galli,
Bhusavakl, Taluka Bhusaval,
District Jalgaon. ..APPLICANT

VERSUS

Hemant s/o Rajkumar Kabra,
Age: 28 years, Occ: Service,
R/o. Room No.12, Raje Sambhaji
Nagar, near Sant Nirankari Bhavan,
Saki Vihar Road, Powai, Mumbai. ..RESPONDENT

Mr Rajendra S. Deshmukh, Advocate for applicant;
Mr A.S. Deshpande, Advocate for respondent

CORAM : NITIN W. SAMBRE, J.

DATE : 27th SEPTEMBER, 2017

ORAL ORDER :

Learned Counsel for the applicant submits that the relations between the parties arising out of the marriage solemnized on 13th June, 2014 is not in dispute.

2. At the behest of applicant-wife,

(2)

prosecution under Section 498-A of the Indian Penal Code and under the provisions of Protection of Women from Domestic Violence Act are pending in the Court at Bhusawal, whereas the respondent-husband has initiated the proceedings at Family Court, Bandra, Mumbai being Petition No. A-126 of 2017 seeking divorce under Section 13(1)(ia) of the Hindu Marriage Act, 1955.

3. It is this proceedings of which transfer is sought from Family Court, Bandra, Mumbai to the Court of Civil Judge, Senior Division, Bhusawal on the ground that the applicant is residing with her parents. There are two other proceedings viz., proceedings under D.V. Act and under Section 498-A of the Indian Penal Code against the respondent at Bhusawal. It is further claimed that since there is no independent source to the applicant, who is maintaining herself from the amount of maintenance, which she is receiving to the extent of Rs.5000/- per moth, it will difficult for the applicant to travel on each date to Mumbai and attend the

(3)

proceedings.

4. So as to substantiate his contention, Mr. Deshmukh, learned Counsel for the petitioner would invite attention of this Court to the judgment of the Apex Court in the matter of ***Vaishali Shridhar Jagtap vs Shridhar Vishwanath Jagtap***, reported in ***A.I.R. 2016 SC 3584***, particularly paragraph-5 thereof and in the matter of ***Gangadep Kaur vs J.S. Bindra***, reported in ***A.I.R. 2001 SCW 5125***, particularly paragraph-2 thereof, so as to canvass that hardship and convenience of the applicant-wife is required to be addressed. He submits that the distance between Bhusawal and Bandra is almost 440 kms. and it will be difficult for the applicant alone to travel.

5. Per contra, learned Counsel for the respondent submits that he extend consent for transfer of the proceedings to Aurangabad, to which, the applicant is not agreeing. He narrates the violent instances on the part of applicant during mediation.

(4)

6. Learned Counsel for the applicant, in response to the suggestion of the respondent - that respondent extends his consent for transfer of the proceedings to Aurangabad, has objection for the same. For transfer of the proceedings from Bhusaval to Jalgaon, which is 25 kms. away from Bhusaval, to which, respondent is not in agreement. In the aforesaid background, learned Counsel for the respondent makes following submissions.

7. Learned Counsel for the respondent submits that he is ready and willing to pay sleeper class travel charges for the applicant and one companion from Bhusaval to Bandra, Mumbai and also she can stay with her relatives at Mumbai.

8. In response to Court's query, whether the respondent is ready and willing to pay Rs.5000/- towards travel and other expenses, learned Counsel for the respondent, upon instructions, reluctantly agrees.

(5)

9. In view of above, having regard to the judgment of Apex Court in the matter of **Anindita Das vs Srijit Das, decided on 29th August, 2005 in Transfer Petition (Civil) No. 191 of 2005**, it will be appropriate, in my opinion, to pass following order.

(i) The respondent-husband shall deposit amount of Rs.10,000/- (Rs. Ten thousand only) with the Family Court, Bandra, Mumbai in the proceedings between the parties within a period of two months from today.

(ii) Family Court, Bandra, Mumbai shall permit withdrawal of the amount of Rs.5000/- on each date, when the applicant personally attends the proceedings.

(iii) The respondent shall continue to deposit amount of Rs.5000/- on each date, till final disposal of the petition.

(6)

(iv) If the amount remained in balance with the Family Court, Bandra, Mumbai, same be paid to the applicant-wife to be adjusted against the amount of maintenance.

10. With the above observations, Misc. Civil Application stands disposed of.

(NITIN W. SAMBRE, J.)

Tupe