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

MISC. CIVIL APPLICATION NO.76 OF 2016

Rashmi Milind Patil,
Age: 36 years, Occ: Household,
R/o. C/o. Dr. B.R. Baviskar,
New Plots, Amalner,
Taluka Amalner, Dist. Jalgaon. ..APPLICANT

VERSUS

Milind Baburao Patil,
Age: 41 years, Occ: Service,
R/o. Woods Apartment, Flat
No. 302, Balewadi Stadium,
Near Mitcon Institute,
Pune-411 045 ..RESPONDENT

Mr Girish S. Rane, Advocate for applicant;
Smt. Vaishali Patil (Jadhav), Advocate for
respondent

CORAM : N.W. SAMBRE, J.

DATE : 8th JUNE, 2017

ORAL ORDER :

This application is by applicant-wife seeking transfer of the proceedings being Petition No. A-65 of 2016 initiated by respondent-husband under Section 13(1)(ia)(iii) of Hindu Marriage Act at Family Court, Nashik to the Court of Civil

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Judge, Senior Division at Amalner.

2. It is brought to the notice of this Court that present applicant has initiated proceedings being Hindu Marriage Petition No.37 of 2016 under Section 9 of Hindu Marriage Act for restitution of conjugal rights, which according to the applicant, is pending on the file of Court of Civil Judge, Senior Division, Amalner. Learned Counsel for the applicant submits that in view of provisions of Section 22 of the Code of Civil Procedure, present applicant approached this Court seeking transfer of the proceedings in the back drop of scheme under Section 22 of the Code of Civil Procedure as being defendant to the said proceedings as every right claiming maintainability of the proceedings at either places i.e. Nashik or Amalner. According to him, proceedings are required to be transferred to Amalner considering her convenience as woman and also in view of maintainability of the same under Section 22 of the Code of Civil Procedure before the Court at Amalner. He would then urge that if

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the proceedings are continued at Nashik, the applicant will be required to attend the proceedings along with companion by travelling around 200 kms. on each date. In addition, he would urge that law on the issue is well settled and sought support from the judgment of this Court in the matter of **Bhavana Kirit Trivedi vs. Kirit B. Trivedi** reported in **2005(4) ALL MR 124** so as to lay emphasis on Sections 22 to 24 of the Code of Civil Procedure.

3. Per contra, Smt. Patil, learned Counsel for the respondent would urge that the proceedings at Nashik are very much maintainable. According to her, respondent is working at Pune, whereas couple having been blessed with a son, who is aged about 10 years, is taking education at Public School in Devlali, Nashik. According to her, mother of the respondent is residing at Nashik and it is convenient for both of them i.e. applicant and respondent to attend the proceedings at Nashik, as each of them will be required to travel same

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distance. She would then urge that her son is also studying at Nashik and it is always open for the applicant to visit her son in the boarding school. In addition, a submission is made that the applicant is ready and willing to bear travelling and out of pocket expenses.

4. Having considered the rival submissions, it is required to be noted that the proposal given by the respondent, particularly as regards offering travelling and out of pocket expenses and opportunity of the applicant to meet her at Nashik was turned down by learned Counsel for the respondent, upon instructions, with submission that the matter seeking prayer for transfer to the Court of Civil Judge, Senior Division at Amalner needs to be allowed.

5. In the aforesaid back ground, this Court is required to consider the said prayer, particularly by striking out balance in between hardship suffered by both the parties.

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6. It is not in dispute that the applicant herein is residing at Amalner along with her parents, whereas her real brother is residing at Nashik. Though distance between Amalner and Nashik is around 200 kms. better public transport connectivity is not disputed. Apart from above, son of the applicant and respondent is studying at Nashik is not an issue, which is under dispute.

7. On the other hand, respondent-husband is serving at Pune and is visiting Nashik so as to attend his son and mother. He has shown bonafides by offering travelling and out of pocket expenses, which offer, was straight way refused and rejected by the applicant.

8. It is then to be noted that the Apex Court in the matter of **Krishna Veni Nagam vs Harish Nagam** delivered in **Transfer Petition (Civil) No. 1912 of 2014 decided on 9th March, 2017** in Paragraph Nos.14, 15, 16, 17 and 18 has observed

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thus :

"14. One cannot ignore the problem faced by a husband if proceedings are transferred on account of genuine difficulties faced by the wife. The husband may find it difficult to contest proceedings at a place which is convenient to the wife. Thus, transfer is not always a solution acceptable to both the parties. It may be appropriate that available technology of video conferencing is used where both the parties have equal difficulty and there is no place which is convenient to both the parties. We understand that in every district in the country video conferencing is now available. In any case, wherever such facility is available, it ought to be fully utilized and all the High Courts ought to issue appropriate administrative instructions to regulate the use of video conferencing for certain category of cases. Matrimonial cases where one of the parties resides outside court's jurisdiction is one of such categories. Wherever one or both the parties make a request for use of video conference, proceedings may be conducted on video conferencing, obviating the needs of the party to appear in person. In several

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cases, this Court has directed recording of evidence by video conferencing.

15. The other difficulty faced by the parties living beyond the local jurisdiction of the court is ignorance about availability of suitable legal services. Legal Aid Committee of every district ought to make available selected panel of advocates whose discipline and quality can be suitably regulated and who are ready to provide legal aid at a specified fee. Such panels ought to be notified on the websites of the District Legal Services Authorities/State Legal Services Authorities/National Legal Services Authority. This may enhance access to justice consistent with Article 39A of the Constitution.

16. The advancement of technology ought to be utilized also for service on parties or receiving communication from the parties. Every district court must have at least one e-mail ID. Administrative instructions for directions can be issued to permit the litigants to access the court, especially when litigant is located outside the local jurisdiction of the Court. A designated

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officer/manager of a district court may suitably respond to such e-mail in the manner permitted as per the administrative instructions. Similarly, a manager/information officer in every district court may be accessible on a notified telephone during notified hours as per the instructions. These steps may, to some extent, take care of the problems of the litigants. These suggestions may need attention of the High Courts.

17. We are thus of the view that it is necessary to issue certain directions which may provide alternative to seeking transfer of proceedings on account of inability of a party to contest proceedings at a place away from their ordinary residence on the ground that if proceedings are not transferred it will result in denial of justice.

18. We, therefore, direct that in matrimonial or custody matters or in proceedings between parties to a marriage or arising out of disputes between parties to a marriage, wherever the defendants/respondents are located outside the jurisdiction of the court, the court

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where proceedings are instituted, may examine whether it is in the interest of justice to incorporate any safeguards for ensuring that summoning of defendant/respondent does not result in denial of justice. Order incorporating such safeguards may be sent along with the summons. The safeguards can be:-

i) Availability of video conferencing facility.

ii) Availability of legal aid service.

iii) Deposit of cost for travel, lodging and boarding in terms of Order XXV CPC.

iv) E-mail address/phone number, if any, at which litigant from out station may communicate."

9. It is then required to be noted that there is legal aid service available at Nashik, so also, respondent has given offer to deposit cost for travelling and other out of pocket expenses. Mobile connectivity is also not an issue, which is under

dispute.

10. In the aforesaid back ground, in my opinion, the claim of present applicant that the matter needs to be transferred to the Court of Civil Judge, Senior Division, at Amalner does not hold any substance and as such, same stands rejected.

11. In view of rejection of the prayer, it is amply clear that proceedings under Section 13 of the Hindu Marriage Act initiated by respondent will continue at Nashik. However, the respondent initially shall deposit amount of Rs.7000/- (Rs.Seven thousand only) with Family Court at Nashik in the proceedings under Section 13 of the Hindu Marriage Act. The Judge, Family Court shall ensure that on each date out of the aforesaid amount of Rs.7000/-, Rs.3500/- (Rs. Three thousand five hundred only) is paid to the applicant towards travelling and other expenses. It is further ordered that the respondent shall continue to

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deposit amount of Rs.3500/- on each date before
Family Court, Nashik.

12. Misc. Civil Application stands disposed of
in above terms.

(N.W. SAMBRE, J.)

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