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

MISC. CIVIL APPLICATION NO.119 OF 2016

Sau. Poonam Ankit Shah,
Age: 34 years, Occ: Household,
R/o. C/o. Shri. Narendrakumar Jain,
Near Kashinath Lodge, Satara Bridge,
Bhusawal, Tal. Bhusawal,
Dist. Jalgaon. ..APPLICANT

VERSUS

Shri. Ankeet Bharat Shah,
Age: 35 years, Occ: Service,
R/o. A 5/4 Avanti Apartments,
Flank Road, Sion East,
Mumbai 400 022 ..RESPONDENT

Mr M. M. Bhokarikar, Advocate for appellant;
Mr R.M. Gaikwad, Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 6th JUNE, 2017

ORAL ORDER :

This application is by applicant-wife seeking transfer of the proceedings being Petition No. A-1622 of 2014 initiated by respondent-husband at Family Court, Bandra, Mumbai to the District Court at Bhusawal.

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2. The facts as are necessary for deciding the application are as under :

The applicant got married to the respondent on 4th March, 2010 at Mumbai. Prior to the said marriage, it is not in dispute that the present applicant was residing with her parents at Akola and all rituals prior to marriage were taken place at Akola. It is specifically stated by the present applicant in transfer application under Section 24 of the Code of Civil Procedure and proceedings for maintenance initiated under the provisions of Hindu Adoption and Maintenance Act at Bhusawal about her permanent place of abode and of her parents is at Akola.

3. Taking out exception to the above factual matrix, it is further alleged that after differences ensued between the applicant and respondent, the applicant with consent of her parents started residing with her maternal uncle at

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Bhusawal. The compelling circumstances narrated for her stay at Bhusawal are ; (a) four daughters of maternal uncle are already married and residing with their respective husband, (b) maternal aunt is suffering from cancer and need constant attendant, (c) so as to avoid queries from neighbours about her marital life, particularly at Akola she was required to stay at Bhusawal.

4. It is brought to my notice in addition to above that the proceedings at Bhusawal for maintenance are pending adjudication and as such, divorce petition initiated at Bandra be ordered to be transferred at Bhusawal and be tagged with it. Reliance is placed on the views expressed by the Apex Court on the issue of convenience of female/woman by Mr. Bhokarikar, learned Counsel for the applicant-wife.

5. Per contra, prayer of the applicant for transfer of the proceedings is strenuously resisted by learned Counsel for the respondent-husband on the ground that the applicant is indulging in forum

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shopping, as the parents of the applicant are residing at Akola and but for marriage, all marriage rituals were performed at Akola. He has consented for transferring proceedings to Akola. He would then urge that the applicant has suppressed material fact from the Court as regards status of her maternal uncle being practicing Advocate at Bhusawal in the application, which perhaps the cause for seeking transfer of the proceedings to Bhusawal, rather than to Akola. Learned Counsel would then invite attention of this Court to the judgment of 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** so as to submit that there is video conferencing facility available at Bandra Court, so also legal aid service. He would then urge that if required, he is ready and willing to bear cost of travelling, lodging and boarding. According to him, the application is wholly mis-conceived and moved with an intention to cause loss to the present respondent.

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6. Having considered the rival submissions, it is required to be noted that learned Counsel for the applicant, in response to offer made by the respondent for extending consent for transfer of the proceedings to Akola Court, has refused and rejected such proposal.

7. It is not in dispute before this Court that the maternal uncle of the applicant is practicing lawyer at Bhusawal, which fact is also suppressed by the applicant.

8. Apart from above, if the application for maintenance moved at Bhusawal Court is perused, the applicant has claimed therein that she has completed her education and other marriage rituals other than marriage at Akola. The father of applicant is serving at Akola. The only exception for seeking transfer of the matter from Bandra Court to Bhusawal Court is that incidentally she is residing with maternal uncle (practicing Advocate) at Bhusawal. Apart from above, though the

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circumstances were sought to be relied before this Court to establish compelling her stay at Bhusawal i.e. ill health of her maternal aunt, what could be noticed from the pleadings of the application under Section 24 that the applicant has not disclosed place of residence of four daughters of maternal uncle and why they are not in a position to attend their ailing mother. Apart from above, the fact remains that learned Counsel for the respondent has rightly invited attention of this Court to the judgment of the Apex Court delivered in **Krishna Veni Nagam vs Harish Nagam** delivered in **Transfer Petition (Civil) No. 1912 of 2014 decided on 9th March, 2017**. Paragraph-14, 15, 16, 17 and 18 of the said judgment read 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

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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 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

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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 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

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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 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:-

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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. In the back drop of above, it is not only convenience of the wife is required to be addressed by this Court but this Court is also required to be considered the balance between convenience of the applicant-wife and respondent-husband.

10. From the very conduct of the applicant, particularly refusing to consent for transfer of case to Akola Court, her incidental stay at Bhusawal and other circumstances as are narrated herein above, when the Court was about to dismiss the application with costs, Mr. Bhokarikar, learned Counsel for the applicant submits that he is

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consenting for getting the matter transferred to Akola Court and his prayer be considered on the same line. With certain reservation, learned Counsel for respondent consent for the same.

11. In view of above, it will be appropriate, in my opinion to allow the application.

12. Divorce Petition being No. A-1622 of 2014 pending on the file of Family Court, Bandra, Mumbai is directed to be transferred to the Family Court at Akola. Both the parties undertake to appear before Family Court at Akola on 27th June, 2017.

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

(N.W. SAMBRE, J.)

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