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

MISC. CIVIL APPLICATION NO. 147 OF 2016

Jasveen Kaur @ Smita W/o Tajindarsing Chhabda,
age 30 years occupation nil
R/o C/o Vitthal Pise (Tailor),
521 Centre Street Camp, Pune.
At present Plot No. 56, 1st Floor,
Sindhi Colony, Jalna road, Aurangabad.

..APPLICANT

VERSUS

Tajindarsing S/o Kamaljeetsing Chhabda,
age 34 years occupation business
R/o Plot No. 56, 1st Floor, Sindhi Colony,
Jalna road, Aurangabad.

...RESPONDENT

Mr Ajay D. Pawar, Advocate, for applicant.
Mr Hemant Surve and Mr Kshitij Surve, Advocates for respondent.

CORAM : N.W. SAMBRE, J.

DATE : 22nd June, 2017

ORAL ORDER

The present application is seeking transfer of proceedings being H.M.P. A- No. 302/2016, initiated by respondent u/s. 13(1)(ia) of the Hindu Marriage Act, 1955, for grant of divorce, pending before the learned Family Court, Aurangabad, to the Family Court, Pune.

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2. The parties to the present application were married on December 27, 2009, and on December 5, 2010 they are blessed with a son.

3. There appears dispute immediately thereafter, which has resulted into initiation of proceedings between the parties and on October 3, 2012 in Misc. Civil Application No. 52/2012, the present respondent-husband consented for transfer of some proceedings which were initiated before the Family Court, Aurangabad, to the Family Court, Pune.

4. In the aforesaid backdrop, the learned Counsel for the applicant/wife would urge that the proceedings, which are pending on the file of Family Court, Aurangabad, be ordered to be transferred to the Family Court, Pune, as the minor son is in her custody. Her father and mother, are aged about 75 and 68 years respectively and it is difficult for her to travel from Pune to Aurangabad on each occasion to attend the proceedings. He would then urge that the convenience of the wife and hardship suffered by her is required to be appreciated.

5. Per contra, Shri Surve, learned Counsel for the

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respondent/husband would strenuously urge that the present matter be adjourned for some time, as the respondent/husband has already questioned the proceedings initiated u/s. 125 of the Criminal Procedure Code before this Bench and the said matter is likely to be heard in the recent future. He would then urge that he would like to take steps for clubbing said matter with the present matter. In addition, Shri Surve would urge that the earlier consent for transfer by the respondent is considering the position as was prevailing in 2012, particularly, when the son was 2 years old. According to him, the subsequent developments are required to be considered and appreciated. According to him, respondent is suffering from serious eye ailment, which prompts him not to undertake travel independently and is required to be dependent on other i.e. his aged parents or some else third person to undertake trial.

6. In order to substantiate his contention, Mr Surve invites attention of this Court to the medical documents. In addition, Shri Surve would urge that the earlier proceedings have ended into settlement, sometime on 25th October 2013, and the respondent/husband had made endeavour to maintain the applicant alongwith son. However, looking to her occupation that of modeling and her visits to several places, she has on her own given up the

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company of the present respondent. He would then urge that respondent's mother is suffering from heart ailment, whereas father is also in advance stage. This aspect should also be considered.

7. So far as first issue as is canvassed by Shri Surve is concerned, it is required to be noted that perusal of the various orders passed by this Court would reflect that the matter is pending for decision on an application for transfer since last about an year and the adjournments have been granted mostly at the request of respondent/husband.

8. It is then to be noted that whether proceedings initiated u/s. 125 of the Criminal Procedure Code are to be transferred from Pune Court to Aurangabad Court, is an issue, which in my opinion will have hardly any bearing over the issue involved in the present application, as admittedly, present proceedings are initiated prior in time than the proceedings under the provisions of Section 125 of Criminal Procedure Code, and also the proceedings before this Court questioning legality of proceedings initiated u/s. 125 of Cr.P.C. by the applicant. As such, the prayer that the matter be adjourned, in my opinion, is required to be rejected, and it is accordingly rejected.

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9. So far as next submission of the respondent is concerned, it is to be noted that the respondent was suffering from eye ailment, for which he had undergone appropriate treatment. Shri Surve was right in inviting attention of this Court to the various documents to that effect. While scanning such documents, this Court should not miss the certification dated November 21, 2016, which speaks that the respondent had underwent relevant surgical procedure in relation to his eye ailment and he can travel and also can do normal activities. Such certification could be noticed at page 188 of the paper book.

10. Apart from above, though Shri Surve would urge that there is video conferencing facility and the legal aid facility is available at Aurangabad, in my opinion, the prayer of the applicant for transfer of the proceedings pending at Family Court, Aurangabad, is required to be considered in the backdrop of the earlier proceedings, which were initiated between the parties and which were consented for transfer to Pune by the non-applicant-husband.

11. It is then necessary to be observed here that applicant is blessed with a son, who is aged about six years and studying at Pune. The applicant is claiming to be residing along with her parents and it is convenient for her to pursue the proceeding at Pune. If she

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is made to travel for attending the proceeding from Pune to Aurangabad, she will definitely suffer hardship, particularly, when her minor child is studying at Pune and she is residing with her parents.

12. In the aforesaid background, in my opinion, present application needs to be allowed in terms of prayer clause "B".

13. Shri Surve would urge that the direction may be issued to the Family Court, Pune, for expeditious hearing of the matter. It is open for respondent to approach to the proper forum with the prayer for early hearing of the matter. He is at liberty to approach the Family Court, Pune, with such a prayer.

(N.W. SAMBRE, J.)

pjm