

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

44 MISC.CIVIL APPLICATION NO. 161 OF 2017

Madhuri W/o Jashwant Irale,
Age : 29 years, Occu : Household,
R/o : C/o : Sanjay Radhakishan Thombre,
Shaneshwar Bunglow, Plot No.10,
Shirsath Farm, Nirmal Nagar Road,
Pipe Line Road, Savedi,
Tq. & Dist. Ahmednagar

Applicant

VERSUS

Jashwant S/o Bhagwanrao Irale,
Age : 30 years, Occu : Service,
R/o : C-34, Opp. Sanjog MIT Hospital,
N-4, CIDCO, Aurangabad.

Respondent

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Advocate for Applicant : Mr. S.S. Jadhavar
Advocate for Respondent : Mr. V.D. Sapkal for Respondent sole

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CORAM : V.K.JADHAV, J.
DATED : 4th DECEMBER, 2017.

PER COURT :-

1. By way of this application, the applicant-wife is seeking transfer of Hindu Marriage Petition No.278 of 2016 pending before the Court of Civil Judge, Senior Division, Aurangabad to the Court of Civil Judge, Senior Division, Ahmednagar.

2. Learned counsel for the applicant-wife submits that the applicant has already filed Criminal Application No.1008 of

2016 against the respondent-husband under the provisions of Protection of Women from Domestic Violence Act, 2005, and the same is pending before the learned Magistrate, Ahmednagar.

3. Learned counsel submits that even the applicant has also filed Miscellaneous Criminal Application No. 1013 of 2016 in the Court of Judicial Magistrate. First Class at Ahmednagar, seeking maintenance from the respondent under the provisions of section 125 of Code of Criminal Procedure. The learned counsel submits that in the proceedings under the Domestic Violence Act as well as under section 125 of Cr.P.C. though filed in the year 2016, the respondent-husband has not put his appearance in those proceedings. Apart from this, the applicant-wife has also filed HMP No.85 of 2017 in the Court of Civil Judge, Senior Division, Ahmednagar seeking relief of restitution of conjugal rights and said HMP is still pending. Learned counsel submits that the family of respondent husband is having criminal antecedents and number of cases have been lodged against the mother of respondent and other family members. Further, mother of the respondent is a political person and she is using her political influence even in

criminal cases lodged against her as well as lodged by her. Learned counsel submits that under these circumstances, it is difficult for the applicant-wife to travel from Ahmednagar to Aurangabad to attend the court cases.

4. The learned counsel for the respondent-husband submits that the applicant-wife has instituted the Regular Civil Suit No.235 of 2014 before the Civil Judge, Senior Division, Ahmednagar, against one Shrikrishna Whale, wherein she has claimed that marriage dated 29.06.2012 between the applicant and said Shrikrishna Whale be declared as illegal, as the same is result of fraud. Further, said Shrikrishna has also filed an application before the Family Court, at Pune bearing HMP No.99 of 2014 for restitution of conjugal rights. The said proceedings came to be disposed of as withdrawn. The learned counsel submits that, however, the applicant-wife has suppressed all these material facts and cheated the respondent-husband. Consequently, the respondent has filed H.M.P. No.278 of 2016 for divorce against the applicant-wife. Learned counsel submits that under the backdrop of these facts, it would be a punishment for the respondent-husband to attend the dates at Ahmednagar Court. Learned counsel

submits that in the alternate, the respondent-husband is ready to bear travelling, lodging and boarding expenses of the applicant-wife and one person accompanying her, for each hearing. The learned counsel for the respondent in order to substantiate his contentions has placed reliance on the judgment of the Supreme court in the case of ***Krishna Veni Nagam Vs. Harish Nagam, reported in AIR 2017 SC 1345.***

5. It appears that the applicant-wife has initiated the proceedings under the Hindu Marriage Act by filing an application bearing HMP No.85 of 2017 for restitution of conjugal rights against the respondent-husband and same is pending before the Court of Civil Judge, Senior Division, Ahmednagar. Besides this, the applicant-wife has also initiated the proceedings under the Provisions of Protection of Women from Domestic Violence Act, 2005, and also under section 125 of Cr.P.C. seeking maintenance against the respondent-husband.

6. Except suppression of the facts about earlier connection with said Shrikrishna Whale, the respondent-husband has not given any other reason in the event if the

case is transferred at Ahmednagar. It is to be noted here that the distance between Ahmednagar and Aurangabad is hardly 120 Kms. which is two hours journey by bus. In addition to this, the applicant-wife has filed certain other proceedings under the provisions of different Acts and those are pending before Ahmednagar Court. In view of the same, I do not find any hurdle as such to transfer pending HMP to Ahmednagar Court, where the applicant-wife resides. Hence, following order:-

O R D E R

- (I) Miscellaneous Civil Application is allowed in terms of prayer clause (B).
- (II) Miscellaneous Civil Application is accordingly disposed of.

(V.K.JADHAV, J.)

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