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

**MISC. CIVIL APPLICATION NO. 833 OF 2016
WITH
CIVIL APPLICATION (O) NO. 120 OF 2017
IN
MISC. CIVIL APPLICATION NO. 833 OF 2016**

Mrs. Aishwarya Viraj Joshi,
Aged 34 years, Occ: Household,
R/o. C/o Smt Ratnaprabha,
Shilpkala Colony, Angad Nagar,
Shri. Datt Apartment flat No.101
Tq. and Dist. Amravati. ..APPLICANT

VERSUS

Viraj s/o Prakash Joshi,
Aged 40 years, Occ: Service,
R/o. A-3, Uday Co-operative
Housing Society, Nelson Square,
Chhaoni, Nagpur. ..RESPONDENT

Mr S.S. Alaspurkar, Advocate for applicant;
Smt. Neeta Jog, Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 13th APRIL, 2017

ORAL ORDER :

The parties hereto married on 13th December, 2013 at Amravati and out of matrimonial discord, the respondent-husband has initiated the proceedings being Hindu Marriage Petition No. A-238 of 2016 before Family Court, Nagpur, under Section

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13(1)(ia) of the Hindu Marriage Act, 1955 for divorce. The applicant-wife initiated the proceedings before the Family Court, Amravati being Misc. Criminal Application No. 78 of 2016 under Section 125 of the Code of Criminal Procedure for grant of maintenance.

2. By the present application, the wife has sought transfer of the proceedings pending on the file of Family Court, Nagpur to Family Court, Amravati on the ground that she is not getting any maintenance and out of compulsion, she is required to stay with her parents at Amravati. It is also urged that there is complaint lodged against the respondent-husband on 24th February, 2016 at Nagpur Police Station about his conduct.

3. According to learned Counsel for the applicant, in view of above, hardship will be caused to the applicant, if proceedings are continued at Nagpur. According to him, convenience of the wife is required to be considered in view of law laid down by the Apex Court in catena of

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judgments.

4. Per contra, learned Counsel for the respondent-husband would rely upon the provisions of Section 21A of the Hindu Marriage Act, 1955 so as to submit that divorce proceedings initiated and pending in Family Court, Nagpur is prior in point of time than the application under Section 125 of the Code of Criminal Procedure pending on the file of Family Court, Amravati, initiated by applicant-wife. According to her, as such, the proceedings from the Family Court, Amravati are required to be transferred to Family Court, Nagpur and application praying for such relief in the form of cross objection to that effect is filed. She would then urge that sister of the applicant is residing at Nagpur and she can very much stay with her at Nagpur for attending proceedings. According to her, merely for causing harassment to the respondent-husband, the application for transfer of the proceedings is moved.

5. Considered rival submission. It is no

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doubt true that under Section 21-A of the Hindu Marriage Act, 1955, if the proceedings by rival spouse under Section 13 of the Hindu Marriage Act, 1955 are initiated, the proceedings initiated at later point are required to be transferred and heard with the proceedings which are initiated first in point of time.

6. In the present case, the proceedings for divorce under Section 13 of the Hindu Marriage Act, 1955 though are initiated prior in point of time by respondent-husband, however, said Section would not attract for proceedings under Section 125 of the Code of Criminal Procedure by wife. In view of judgment delivered by the Apex Court that convenience of wife is required to be considered, in my opinion, objection to that effect needs to be over-ruled. As such, Misc. Civil Application is allowed in terms of prayer clause (a).

7. So far as the claim of respondent-husband for transfer of the proceedings initiated by wife under Section 125 of the Code of Criminal Procedure

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to Family Court, Nagpur from Family Court, Amravati being Misc. Criminal Application No. 78 of 2016 initiated by applicant-wife for maintenance under Section 125 of the Code of Criminal Procedure is concerned, said stands rejected in view of above observations. Civil Application No. 120 of 2017 stands disposed of in above terms.

(N.W. SAMBRE, J.)

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