

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

MISC.CIVIL APPLICATION NO.93 OF 2018

ASHWINI MAHESH BHISE
VERSUS
MAHESH DHONDIRAM BHISE

...
Advocate for the Applicant : Shri Dhade Vijay R. and Shri B.G.Lathe.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 15th December, 2018

Per Court:

1 The Applicant/ wife prays for transferring HMP No.209/2017 filed by the Respondent/ Husband before the learned Civil Judge, Senior Division, Latur to the Court of the learned Civil Judge, Senior Division, Vaijapur, District Aurangabad.

2 This Court issued notice on 26.06.2018 to the Respondent. The Respondent has also been served privately and the service affidavit is filed on record. I have perused the service affidavit tendered by the Applicant, the original speed post A.D. Receipt dated 06.09.2018 and the copy of the tracking report obtained from the official website of the Department of Posts, Ministry of Communications, Government of India, which indicates that the notice has been served on the Respondent on 13.10.2018 at 15.26.05 hours. Yet, no appearance has been entered on

behalf of the Respondent in this matter.

3 I have, therefore, considered the submissions of the learned Advocate for the Applicant. I have considered the view expressed by the Honourable Supreme Court and this Court in the judgments cited before me.

4 It is submitted that the marriage was solemnized on 17.04.2008 and out of the wedlock, the couple has two daughters, aged 5 and 3 years. However, the Respondent/ husband and his relatives started ill-treating and harassing the Applicant/ wife for one reason or the other. The Applicant/ wife was compelled to leave the marital home and since then, the Applicant is residing along with her parents. The distance between Latur and Vaijapur is about 390 kilometers and it requires two overnight journeys for the Applicant to attend the proceedings. Being a lady, an adult member of the family has to accompany her. Criminal Case under Section 12 of the Protection of Women from Domestic Violence Act, 2005 is filed before the learned Judicial Magistrate First Class, Gangapur, District Aurangabad.

5 The Applicant has placed reliance upon the following judgments :-

(a) *Sumita Singh vs. Kumar Sanjay, (2001) 10 SCC 41 : AIR 2002 SC 396.*

(b) *Mahadevi Mehtre vs. Gopal, 2015 (5) AIR Bom. 250.*

- (c) Mona Aresh Goel vs. Aresh Satya Goel, 2000 (9) SCC 255 : AIR 2000 SCW 2652.*
- (d) Ravinder Kaur vs. Hitinder Singh, AIR 2000 SC 3403 (2).*
- (e) Rena Gautam vs. Vinod Gautam, AIR 2000 SC 3405 (1).*
- (f) Soma Choudhury vs. Gourab Choudhaury (2004) 13 SCC 462.*
- (g) Anjali Ashok Sadhwani vs. Ashok Kishinchand Sadwani, AIR 2009 SC 1374.*
- (h) Vaishali Shridhar Jagtap vs. Shridhar Vishwanath Jagtap, AIR 2016 SC 3584.*
- (i) Reena Mehra vs. Rohit Rai Mehra, AIR 2003 SC 1002.*
- (j) Rakhi Banerjee vs. Subhankar Mukherje, AIR 2009 SC 928.*
- (k) T.Gayatri Devi vs. Tallepaneni Sreekanth, 2013 (6) Bom. C.R. 119 (Supreme Court).*
- (l) Anita Balkrishna Barge vs. Balkrishna Sopan Barge, 2011 (3) Bom. C.R. 866 (Aurangabad Bench).*
- (m) Smita Dhananjay Patil vs. Dhananjay Krishnakumar Patil, 2013 (5) Bom.C.R. 694 (Aurangabad Bench).*
- (n) Kalpana Pankaj Rozatkar vs. Pankaj Supadu Rozatkar, 2013 (6) Bom.C.R. 161 (Aurangabad Bench).*
- (o) Sayali Swapnil Kuber vs. Swapnil Harischandra Kuber, 2014 (1) Mh.L.J. 584 (Nagpur Bench).*

6 Considering the above, this Miscellaneous Civil Application is allowed in terms of prayer clause "B", which reads as under :-

"(B) The proceeding bearing HMP No.209 of 2017 instituted by the Respondent under Section 9 of the Hindu Marriage Act for restitution of conjugal rights pending before Ld. Civil Judge (S.D.), Latur may kindly be transferred to Hon'ble Civil Judge (S.D.) Vaijapur, District Aurangabad in the interest of justice."

7 The Applicant would appear before the concerned Court after the transfer on 04.01.2019. The concerned Court would issue notice to the Respondent.

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(RAVINDRA V. GHUGE, J.)