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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

MISCELLANEOUS CIVIL APPLICATION NO.88 OF 2018

Nasarin Sajid Mulla	...	Applicant
V/s.		
Sajid Abdulhay Mulla	...	Respondent

Mr.Abhijit Adagule, for the applicant.
Mr. Satyajeet Shirke, for respondent

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J

DATE : 9th JULY, 2018.

P.C. :

- 1] Heard learned counsel for the applicant and respondent.
- 2] This application is filed under Section 24 of the Code of Civil Procedure, for transfer of Regular Civil Suit No.402 of 2016, filed by the respondent, in the Court of Civil Judge Senior Division, Sangli, to the Family Court at Kolhapur.
- 3] The applicant is the wife of the respondent. The above said suit No.403 of 2016 is filed by the respondent against the applicant under the provisions of Mohammedan Law, for restitution of conjugal rights. The summons of the said suit was, however, served, on the applicant only in the year 2018. Meanwhile, applicant has also filed proceedings under the Domestic Violence of Act, bearing

No. 31 of 2017 and also Criminal Case bearing No.411 of 2017 under Section 498A read with 34 of the Indian Penal Code against respondent and his family members.

4] The contention of the applicant is that she is residing at Kolhapur and her small daughter aged about 6 years is residing with her and dependent on her and therefore, it becomes difficult for her to attend the Court at Sangli where Regular Civil Suit No.403 of 2016 is filed by respondent and therefore, it is requested that this Regular Civil Suit be transferred to the Family Court at Kolhapur.

5] Learned counsel for respondent has strongly resisted this application on the count that he has filed Regular Civil Suit No.403 of 2016 before the applicant has filed proceeding under Domestic Violence Act and the Criminal Case u/s 498A r/w 34 of the Indian Penal Code. Secondly, it is submitted that the distance between Sangli and Kolhapur is only of about one hour and the District Court at Sangli is situated near the S.T. Stand, therefore, the applicant cannot have any difficulty in attending the Court at Sangli. It is further submitted that the respondent is a small time businessman and hence on every date to attend the Court at Kolhapur, he will have to close his business, which will cause loss to him.

6] I have given my thoughtful consideration to the submissions advanced by learned counsel for applicant and

respondent. It is true that if the present application is allowed to remain in the Court at Sangli, then the applicant will suffer inconvenience and if it is transferred to the Court at Kolhapur, respondent will also suffer inconvenience, hence Court has strike the balance between the two.

7] Admittedly, the applicant is a lady having the responsibility of her daughter of 6 years and therefore, her inconvenience is more than inconvenience which respondent is likely to suffer , if the suit is not transferred to the Family Court at Kolhapur. Moreover, at Kolhapur, Family Court is established under the Family Courts Act, 1984, which is the most appropriate and proper forum to decide the family dispute between the parties. Apart from that, two other proceedings filed by the applicant are also pending in the Court at Kolhapur. Hence inconvenience of respondent can be avoided if the same date is taken in all the the proceedings

8] As regards the contention of respondent that his suit is earlier to the proceeding filed by the applicant, as submitted by learned counsel for the applicant that the summons of the said suit was served on the applicant only in the year 2018 and prior to that these two proceedings under Domestic Violence Act and Criminal Case under Section 498A of I.P.C., are filed.

9] Taking into consideration all these facts, in my considered

opinion, this application deserves to be allowed. Hence order.

10] Application is allowed.

11] Regular Civil Suit No.403 of 2016 filed by the respondent in the Court of Civil Judge Senior Division, Sangli is hereby transferred to the Family Court at Kolhapur.

[DR.SHALINI PHANSALKAR-JOSHI, J.]