

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

MISC.CIVIL APPLICATION NO.175 OF 2017

**MRS. POOJA NIRAJ AGRAWAL
VERSUS
NIRAJ MOHAN AGRAWAL**

...
Advocate for the Applicant : Shri V. V. Jahagirdar
Advocate for the Respondent : Shri H. S. Surve
...

CORAM : RAVINDRA V. GHUGE, J.

DATED : 21st JANUARY, 2019.

...

PER COURT :

1. The applicant -wife prays for transferring Petition No. A-164/2017 from the Family Court, Aurangabad to the Family Court at Nanded.

2. It is submitted that after the marriage was solemnized on 07/07/2014, a girl child was born on 05/05/2016. It is alleged that the cruelty and harassment began because of the birth of a girl child. It is further submitted that biologically it has been established that the father is always the person, who is responsible for the birth of a male or a female child in view of the chromosomes that are contributed by him.

3. He submitted that the applicant is presently residing with her parents alongwith the girl child at Nanded. One proceeding under the Protection Of Women From Domestic Violence Act, 2005 and a proceeding under Section 125 of the Cr.P.C. are pending at Nanded. The respondent – husband has been served by paper publication and yet he is remaining away from the said proceedings. Two overnight journeys are required to travel from Nanded to Aurangabad and the three year's old girl child cannot be kept at home as the parents of the applicant are aged.

4. Reliance is placed upon the following judgments :-

- 1) *Vaishali Shridhar Jagtap Vs. Shridhar Vishwanath Jagtap* [(2016) 14 SCC 356]
- 2) *Anjali Ashok Sadhwani Vs. Ashok Kishinchand Sadhwani* [AIR 2009 SC 1374]
- 3) *Mona Aresh Goel Vs. Aresh Satya Goel* [AIR 2000 SC 3512 (1)]
- 4) *Sumita Singh Vs. Kumar Sanjay and Another* [AIR 2002 SC 396]
- 5) *Soma Choudhury Vs. Gourab Choudhaury* [2004 (13) SCC 462]

- 6) *Bhagyashree Ganesh Trimbake Vs. Ganesh Shivling Trimbake*
[Order dated 13/03/2018 passed by this Hon'ble High Court in MCA No. 28/2017].

5. The learned Advocate for the respondent - husband submits that the proceedings initiated by the wife at Nanded are subsequent to the lodging of this M.C.A. An effort for mediation was made and the matter could not be resolved. He denies the allegations of cruelty and harassment. He submits that the applicant - wife can easily travel to Aurangabad and attend the proceedings before the Family Court. The wife has a quarrelsome nature and she keeps on quarrelling with her husband.

6. Having heard the learned Advocates for the respective sides, I do not find it appropriate to go into the allegations made by the couple against each other. Unless serious inconvenience is cited by the husband, the convenience of the wife has to be considered while transferring the proceedings. The respondent - husband has already been served by paper publication in the two proceedings at Nanded. Since the

respondent is now appearing before this Court, he can very well appear before the Nanded Courts in the two pending proceedings and more so in view of the fact that he has been served by paper publication.

7. In the light of the above, I find that the Aurangabad proceeding could be transferred to Nanded and the respondent - husband could be given the liberty to seek common dates in the three proceedings so that he can attend the proceedings on common dates at Nanded.

8 In view of the above, this application is allowed. The Petition No. A-164/2017 shall stand transferred to the learned Family Court at Nanded.

9. The applicant submits the next dates of hearing in the two matters at Nanded in Petition No. E-150/2017 is 23/01/2019 and PWDVA No. 59/2018 is 24/01/2019. As such, the applicant and the respondent would now appear in the transferred proceeding at Nanded Family Court on 08/02/2019. Formal notice to the respondent - husband is not

required to be issued.

10. The learned Advocate for the husband prays that the petition filed by him at Aurangabad and which is now transferred to Nanded, may be expedited. The learned Advocate for the wife prays that her two proceedings could also be expedited.

11. Since these three proceedings are not very old, these parties are granted the liberty to renew their request before the said Courts in the said proceedings for an expeditious hearing, after the Diwali Vacations of 2019 and the Courts may consider the said request keeping in view the pendency before them.

(RAVINDRA V. GHUGE, J.)

shp/-