

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

MISC.CIVIL APPLICATION NO.116 OF 2018

ROSHANI SWAROOP BHALWANKAR
VERSUS
SWAROOP ANAND BHALWANKAR

...
Advocate for Applicant : Mr. Kochar Mahendra G.
Advocate for Respondent : Mr. Joslyn A. Menezes

...
CORAM : MANGESH S. PATIL, J.

DATE : 17.12.2020

PER COURT :

This is a matter under Section 24 of the Code of Civil Procedure, wherein, the wife is seeking transfer of a proceeding for restitution of conjugal rights filed by the respondent in the form of Hindu Marriage Petition No.966/2018 pending on the file of Family Court at Bandra Mumbai to the Family Court at Aurangabad.

2. Learned advocate for the applicant submits that the applicant is resident of Aurangabad which is at a distance of more than 300 kms from Family Court, Bandra. It is difficult for her to attend the proceeding at Bandra. She has a daughter who is taking education at Aurangabad. Couple of other proceedings have been initiated by her, one under the Protection of Women from Domestic Violence Act and a Marriage Petition seeking divorce. Both these proceedings are pending at Aurangabad. Asking her to attend the matter at Bandra Family Court would put her to greater hardship than the respondent husband who can very well attend the other two matters as well as the matter for restitution if it is transferred, at Aurangabad.

3. The learned advocate for the respondent submits that his client does not have any objection for transferring the matter from Family Court

Bandra to Family Court Aurangabad. However, his anxiety is that in spite of the restitution proceeding having been initiated in the year 2018 the applicant has not appeared in that matter, however, simultaneously she is prosecuting the divorce proceeding at Aurangabad causing serious prejudice to him. In fact both the matters deserve to be clubbed and tried together. The Judge of the Family Court at Aurangabad is proceeding ahead with the hearing of the divorce proceeding and therefore necessary direction be given while transferring the matter as prayed for.

4. Since the respondent is now conceding to the fact that the matter deserves to be transferred from the Family Court at Bandra to the Family Court at Aurangabad one need not delve into the other aspects as to the convenience or otherwise and the relative hardship.

5. It is in view of such state of affairs, the Application deserves to be allowed and is accordingly allowed.

6. However, the Family Court at Aurangabad shall not proceed with the Divorce Proceeding till the matter regarding restitution is transferred to that Court. It is thereafter that the Family Court Aurangabad may decide as to if both the matters are to be clubbed and tried together. With these directions, the Application is allowed and disposed of. The parties to appear before the Family Court at Aurangabad on 04.01.2021. There shall be no need for the Family Court Aurangabad to issue notices to them.

7. Parties to act upon the authenticated copy.

(MANGESH S. PATIL, J.)

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