

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

913 MISC.CIVIL APPLICATION NO. 212 OF 2019

**MEGHA MANDAR SAMANT
VERSUS
MANDAR KAMLAKAR SAMANT**

Advocate for Applicants : Mr. V.V. Deshmukh.
Advocate for Respondent : Mr. M.L. Sangit.

**CORAM : MANGESH S. PATIL, J.
DATED : 10.12.2020**

PER COURT :

This is an application under Section 24 of the Code of Civil Procedure Code, whereby the applicant – wife is seeking transfer of a proceeding initiated by the respondent under Section 12 (1) (c) of the Hindu Marriage Act, pending on the file of learned Civil Judge, Senior Division, Chalisgaon, District Jalgaon to Nasik.

2. The learned Advocate for the applicant submits that apart from the proceeding sought to be transferred, already a criminal case instituted by the applicant for the offence punishable under Section 498-A of Indian Penal Code is pending at Nasik. Besides, a proceeding initiated by the respondent under Section 9 of the Hindu Marriage Act is also pending in the Family Court, Nasik. The

applicant is resident of Nasik and has been residing in her parental home since after separation. Her mother has already undergone a kidney transplant operation as has been pleaded in the application. Her father is the doner. She has a girl aged 2 years and it would put her to lot of hardship if she is made to attend the proceeding at Chalisgaon. Therefore, it may be transferred as prayed for.

3. The learned Advocate Mr. Sangit for the respondent – husband submits that though the proceeding for restitution under Section 9 of the Hindu Marriage Act was filed at Nasik, he has already applied seeking its unconditional withdrawal. He has now filed the proceeding at Chalisgaon, seeking declaration as to the nullity of the marriage. Convenience of the wife alone cannot be a parameter for considering the request for transfer. He would cite the decision of the Supreme Court in the case of **Anindita Das Versus Srijit Das in Transfer Petition (Civil) No. 191/2005 with T.P.(C) No. 146 of 2005 dated 29.08.2005**. The learned Advocate submits that apart from this proceeding, even the applicant has initiated a proceeding under Domestic Violence Act, which is pending at Nasik.

4. I have considered the rival submissions, the fact circumstances and the observations of the Supreme Court in the case of **Anindita**

Das (supra). There is no dispute as far as pendency of various proceedings between the parties are concerned. A proceeding under Domestic Violence Act, a criminal case under Section 498-A of IPC and a proceeding for restitution of conjugal rights is currently pending in different fora at Nasik. Similarly, the proceeding for nullity of marriage which is now sought to be transferred is pending at Chalisgaon.

5. Though it is contended that the proceeding for restitution of conjugal rights is now been sought to be withdrawn unconditionally by the respondent, final order is still to be passed in that matter. Be that as it may, a proceedings for criminal case has been initiated by the wife and is pending at Nasik since prior to the proceeding for nullity of marriage is filed at Chalisgaon.

6. True it is that it should not be a matter of course that in each and every case a request by the wife for transfer should be leniently considered. As has been observed in the case of **Anindita Das** (supra), it should depend upon the facts and circumstances of each case.

7. Bearing in mind the proposition, the fact that the applicant's mother was on dialysis has not been controverted. The statement of

her learned Advocate now that the mother has also undergone a kidney transplant and her father is the doner also goes without a demur. Coupled with this, the applicant also has a two year old girl. It is under these circumstances, in my considered view, this is a fit case where this Court should lean in favour of the applicant.

8. However, simultaneously one can also see to it that the respondent husband is not put to unnecessary harassment, having to attend different proceedings at Nasik on different dates. A suitable direction in this respect can certainly be issued. The application is allowed as prayed for in terms of prayer clause (A).

9. However all the Courts in Nasik wherever the proceedings between the parties are pending or may commence shall as far as possible and practicable fix same dates in all matters.

10. A copy of this order be circulated to the Courts at Nasik, wherever the proceedings between the parties are pending and is to be transferred.

(MANGESH S. PATIL, J.)