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

MISC. CIVIL APPLICATION NO. 133 OF 2019

Manjushri W/o. Nilesh Gaikwad, ...APPLICANT
Age-34 years, Occu-Nil,
R/o. C/o. Baban Daulat Pol,
Abhishek Don Bosco Housing Society,
S. No.259, Plot No.29
Prem Colony, Savedi, Ahmendagar,
Tq. & Dist. Ahmednagar

VERSUS

Nilesh S/o. Uttam Gaikwad, ...RESPONDENT
Age-36 years, Occu-Service,
R/o. At present Harklalnagar,
Taloda, Tq. Taloda, Dist. Nandurbar

Mr. Avinash D. Aghav, Advocate for the applicant
Mr. N. T. Tribhuwan, Advocate for respondent

CORAM : N. J. JAMADAR, J.

DATE : 08-03-2021

P. C.

. This application under Section 24 of the Code of Civil Procedure, 1908 is preferred seeking transfer of the Special Marriage Petition No.1/2019 pending on the file of District Judge, Shahada to the Family Court, Ahmendagar.

2. The material averments in the application are as under:-

a. The marriage of the applicant was solemnized with respondent on 31-10-2008. There was matrimonial discord. Eventually, the respondent left the applicant at her parental home at Ahmednagar on 21-09-2017. Despite efforts made by the applicant, the respondent did not allow the applicant to resume the cohabitation. Hence, the applicant instituted a proceeding for restitution of conjugal rights being Marriage Petition P.A.No. 335/2018 under Section 32 of the Indian Divorce Act.

b. Initially, respondent had also filed a petition for divorce before the Family Court, Ahmednagar. Later on respondent withdrew the said proceeding and instituted another proceeding in the court of District Judge, Shahada, Dist. Nandurbar being special Marriage Petition No. 1/2019 under Section 10 of the Indian Divorce Act.

c. The distance between Ahmednagar, where the applicant resides with her mother, and Shahada is around 340 km. Her father has passed away. She has no source of income. The applicant is thus not in a position to attend the court at Shahada and effectively defend the said proceeding. On the contrary, the respondent, being gainfully employed, can attend the court at Ahmednagar without much inconvenience. Hence, this application.

3. The respondent resisted the application by filing an affidavit-in-reply. The marital relationship is not disputed. It is,

however, alleged that attitude of the applicant was the cause for marital discord. When efforts were made by the respondent to resolve the dispute, the applicant and her relatives gave threats to the respondent. Hence, the respondent was forced to abandon the proceeding before the Family Court at Ahmednagar. In the event, the proceeding is transferred from Court at Shahada to the Court at Ahmednagar, the respondent would again meet same fate. Hence, respondent prayed for rejection of the application.

4. Heard learned counsel for the applicant and learned counsel for the respondent.

5. The material on record indicates that discord had taken a toll on the marital life of the applicant and the respondent. It has led to filing of multiple proceedings. The applicant has instituted a proceeding for restitution of conjugal rights. Indisputably, the respondent initially instituted proceeding for a decree of divorce in the Family Court at Ahmednagar and later on withdrew the same and filed instant proceeding, being Special Marriage Petition No. 1/2019, before the District Court Shahada; the transfer of which is sought to Ahmednagar.

6. The allegations and counter allegations are not germane for determination of prayer in the instant application. What matters is the fact that the applicant resides at her parental home at Ahmednagar. The distance between Ahmednagar and Shahada is

stated to be around 340 km. Travel to the said place from Ahmednagar indisputably entails time and expenses. The claim of the applicant that she has no resources cannot be doubted, at this stage. Moreover, another proceeding, being marriage petition No. P.A.335/2018, is pending on the file of Family Court, Ahmednagar. The fact that respondent attends the said proceeding is not controverted.

7. It is trite that in the matter of a prayer for transfer of matrimonial proceedings from one place to another, the convenience of the wife often receives primacy on account of poor financial position and adverse social condition in which a wife usually finds herself in the wake of marital discord. It is true that in a given case a direction to the respondent to bear the expenses of the wife to attend the proceeding at a particular place may be issued, if the husband demonstrates that the transfer would cause serious prejudice to him. In the case at hand, there is no material to indicate that the transfer of the proceeding from Shahada to Ahmednagar would cause such a prejudice to the respondent, especially in view of the fact that another matrimonial proceeding is pending before the Family Court, Ahmednagar.

8. To avoid the attendance before the court at Ahmednagar on different dates in different proceedings, Transferee court can be requested to list both the proceedings on one and same day. Hence, the following order.

ORDER

- i. The application stands allowed.
- ii. The Special Marriage Petition No. 1/2019 stands transferred to the Family Court at Ahmednagar for disposal in accordance with law.
- iii. The Family Court at Ahmednagar is requested to keep both the proceedings i.e. Special Marriage Petition No. P.A.-335/2018 and the transferred Special Marriage Petition No. 1/2019 on one and the same day, as far as possible.
- iv. The parties shall appear before the Family Court, Ahmednagar on 27-04-2021.
- v. The application stands disposed of.

[N. J. JAMADAR, J.]