IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

935 MISC. CIVIL APPLICATION NO. 100 OF 2020

ASMITA W/O VINOD AMBEWADIKAR
VERSUS
VINOD S/O GAUTAM AMBEWADIKAR
.....
Advocate for Applicant : Mr. Shaikh Ashraf Patel
Advocate for Respondent-sole : Mr. Sartajkhan H. Pathan
.....

CORAM : V. K. JADHAV, J.
DATED : 19TH JANUARY, 2021

PER COURT :-

1. Learned counsel for the applicant-wife submits that the applicant is presently residing at Solapur. The respondent-husband has filed Petition A. No. 3 of 2020 for a decree of divorce and Petition D. No. 2 of 2020 for permanent custody of the children at Osmanabad. Learned counsel submits that the respondent-husband used to give threats to the applicant about the consequences if she fails to give him divorce. Even on 19.08.2020, the respondent-husband had called the applicant on her mobile and in a very unparliamentary language threatened the applicant. The applicant has recorded the said conversation. Learned

counsel submits that the applicant is thus frightened to attend the court dates at Osmanabad. Learned counsel for the applicant-wife submits that in a matrimonial proceeding, the convenience of wife is necessary to be considered.

2. Learned counsel for the respondent-husband submits that the couple is blessed with two children. However, the son Aviraj aged 11 years is suffering from brain hemorrhage and is also handicapped and the daughter Ashlesha aged 4 years is suffering from heart problem. The respondent-husband is taking care of them. The medical papers to that effect are placed on record. The applicant-wife has also not disputed their serious ailments. Learned counsel for the respondent-husband submits that the applicant is serving with the Integrated Child Development Department at Solapur. The distance between Solapur and Osmanabad is 65 kms. The applicant is capable to attend the court dates at Osmanabad. Learned counsel submits that the allegations about the threats are false to the knowledge of the applicant.

Even the applicant-wife is also repeatedly making calls on the mobile of the respondent-husband.

3. Learned counsel for the respondent-husband, in order to substantiate his contention, places reliance in the case of ***Amandeep Goyal v. Yogesh Rani***, reported in **AIR 2016 SC 4833**, wherein the Supreme Court has observed that "looking at the peculiar facts of the case, more particularly when the husband is taking care of the child who is nine years old and is suffering from malignant disease, the High Court should have used its discretion in favour of the petitioner-husband".

4. Learned counsel for the respondent-husband submits that in the instant case, since the couple is now residing separately, it is not possible for the respondent-husband to leave the children in the house to be looked after by other family members and to travel the distance to attend the court dates at Solapur.

5. I have carefully gone through the contentions raised by both sides in their respective affidavits. Though in the matrimonial proceedings convenience of wife is required to be considered, however, in the peculiar facts of the case, since both the children are presently in the custody of the respondent-husband and suffering from serious ailments, it would not be just and appropriate to transfer the proceedings from Osmanabad to Solapur. Hence, the Miscellaneous Civil Application is hereby rejected.

(V. K. JADHAV, J.)

vre/-