

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

995 MISC.CIVIL APPLICATION NO.197 OF 2019

**YASHODA NITIN VITEKAR
VERSUS
NITIN GAHININATH VITEKAR**

...
Advocate for Applicant : Shri Khande Avinash A.
Advocate for Respondent : Shri Tarde Vivek V.
...

CORAM : N.J. JAMADAR, J.

DATE : 05/03/2021

P.C. :

1. This application is preferred by the applicant-wife for transfer of Hindu Marriage Petition N o. 217 of 2019 pending on the file of the learned Civil Judge, Senior Division, Ahmednagar to the Court of Civil Judge, Senior Division, Beed.

2. The application arises in the backdrop of the following facts :

The marriage of the applicant was solemnized with the respondent on 19th December, 2000 at Talwada, Taluka Georai, District Beed. They are blessed with two sons; Nirbhay and Abhay. However, the marital life of the applicant and the respondent was afflicted with discord. Eventually, the applicant was forced to reside at her parental home at Talwada, Taluka Georai, District Beed. The applicant instituted a proceeding bearing Misc. Criminal Application No. 555 of 2012 against

the respondent under Section 12 of the Protection of Women From Domestic Violence Act, 2005. As the said application was partly allowed, the respondent preferred an appeal there- against, being Criminal Appeal No. 29 of 2015, which came to be dismissed. The respondent committed default in payment of maintenance as ordered by the learned Magistrate. Hence the applicant had instituted Misc. Criminal Application No. 155 of 2018 for recovery of the said amount which is pending on the file of learned Magistrate, Georai, Dist. Beed. Another application for award of maintenance under Section 125 of the Code of Criminal Procedure, 1973 is also sub-judice. The applicant has also filed Misc. Criminal Application No. 334 of 2018 alleging therein the commission of offence under Section 494 of Indian Penal Code. The respondent has instituted a petition for restitution of conjugal rights bearing No. 138 of 2018. The same came to be allowed. However, the respondent did not allow the applicant to resume co-habitation.

3. In the backdrop of aforesaid proceedings, the respondent has instituted a proceeding for divorce being Hindu Marriage Petition No.217 of 2019, in the Court of Civil Judge, Senior Division, Ahmednagar. The distance between the town of the applicant and Ahmednagar is more than 150 k.m. The financial position of the applicant is not sound. She is not in a position to attend the aforesaid proceeding before the Court at Ahmednagar and effectively defend the proceeding. Hence this

application.

4. The respondent has resisted the application by filing an affidavit-in-reply. Certain allegations are made against the conduct of the applicant while they were cohabiting together. It is contended that the applicant is at fault for non resumption of co-habitation. The transfer of the proceeding to the Court at Beed, according to the respondent, would cause prejudice to the respondent as he is suffering from cervical spondylosis, and is advised not to travel.

5. In the wake of aforesaid pleadings, I have heard Shri Khande Avinash A., learned counsel for the applicant and Shri Tarde Vivek V., the learned counsel for the respondent.

6. Shri Tarde, the learned counsel for the respondent urged that the respondent is ready to bear the expenses of travelling of the applicant to and from Ahmednagar. Placing reliance on a certificate issued by the Medical Officer, attached to the Vaidya Accident Hospital and Physiotherapy Center, Rahuri, District, Ahmednagar, the learned counsel for the respondent would urge that the respondent is not in a position to travel to Beed to attend the proceedings and therefore the proceedings ought not be transferred to Beed.

7. It seems that the marital discord between the parties has led to filing of multiple proceedings. Indisputably, the respondent has appeared in the proceedings which were instituted at the instance of the applicant before the Courts at Georai, District Beed. The respondent had also challenged few orders before the Appellate Court at Beed.

8. In the matter of transfer of matrimonial proceedings, ordinarily, it is the convenience of the wife which receives primacy on account of financial and social condition in which the wife is usually found as a consequence of marital discord. In the case at hand, there is no material to indicate that the transfer of proceedings to Beed would cause a serious prejudice to the respondent. Therefore, the applicant wife cannot be directed to continue to defend the proceedings at Ahmednagar, by making a provision for her travelling and other expenses. Since the respondent has been attending the Courts in Beed District, the ground of ill-health does not carry much conviction.

9. For the foregoing reasons, I am persuaded to allow the application. Thus the following order is passed :

ORDER

- a) Application stands allowed.
- b) The Hindu Marriage Petition No. 217 of

2019 on the file of Civil Judge, Senior Division, Ahmednagar stands transferred to the Court Civil Judge, Senior Division, Beed.

c) Parties shall appear before the Court of Civil Judge, Senior Division, Beed on 15.4.2021.

(N.J. JAMADAR)
JUDGE

mahajansb/