

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

924 MISC.CIVIL APPLICATION NO.232 OF 2018

**PALLAVI SHIVANAND SWAMI
VERSUS
SHIVANAND VAIJNATHAPPA SWAMI**

Y. S. Digraskar, Advocate h/f Mr. G. K. Naik Thigale, Advocate for
the applicant

Mr. Dhananjay M. Shinde, Advocate for respondent

CORAM : N. J. JAMADAR, J.

DATE : 12-03-2021

P. C.

1. This application is preferred seeking transfer of the matrimonial proceeding being HMP No.132/2018 instituted before the Family Court at Nanded by the respondent to the court of Civil Judge Senior Division, Vaijapur.

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

a. The marriage of the applicant was solemnized with respondent on 15-07-2013. The marital life was afflicted with discord. Eventually, the applicant was constrained to leave the matrimonial house and took shelter at her parental house. The applicant instituted an application under Protection of Women From Domestic Violence Act, 2005, being PWDVA Nos. 389/2018 for protective relief in the court of learned Judicial Magistrate,

Vaijapur. The respondent instituted the petition for divorce in the Family Court at Nanded.

b. The applicant cannot travel alone. She has no source of income. The applicant, thus, finds it difficult to attend the proceeding before the Family Court at Nanded and defend the said proceeding effectively. Hence, this application.

3. The respondent has resisted the application by filing an affidavit-in-reply. Averments in the application as regards the distance between Vaijapur and Nanded, financial position and situation in life of the applicant are contested. The respondent has contended that he is ready to bear the expenses of traveling of the applicant. As the respondent is gainfully employed, and suffering from ailments it would be difficult for the respondent to travel to Vaijapur in the event the proceeding is transferred. Hence, the application be dismissed.

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

5. Consistent with the contentions in the affidavit-in-reply learned counsel for the respondent would urge that apart from the fact that the distance between Vaijapur and Nanded is about 350 km. there is no other justifiable reason to transfer the proceeding. Since the respondent is ready to bear the expenses of travel, the

application deserves to be dismissed.

6. In support of the aforesaid submission, the learned counsel for the respondent invited the attention of the court to the order passed by the Supreme Court in the case of ***Preeti Sharma Vs Manjit Sharma 2005 (11) SCC 535***. In the said case, the Supreme Court had declined to transfer the proceeding from Muzaffar Nagar as there was no other justifiable ground except the distance and, thus, the respondent therein was directed to bear the expenses of travel.

7. Evidently, the aforesaid order came to be passed in the peculiar facts of the said case. In the case at hand the distance between Vaijapur and Nanded as per the claim of respondent is about 350 km. It is not the case that the applicant has resources to undertake the travel on her own. The facts that the petitioner has instituted a proceeding under Protection of Women From Domestic Violence of Act, 2005 in the Court of the learned Magistrate at Vaijapur and respondent is required to attend the said proceeding cannot be lost sight of.

8. It is trite law that in the matter of transfer of the proceeding, arising out of the matrimonial dispute, ordinarily, convenience of the wife often receives primacy on account of adverse financial and social circumstances in which the wife usually finds herself in the wake of matrimonial dispute. Undoubtedly, in a

given case, where it is shown that transfer of the proceeding to the place where wife ordinarily resides would cause serious hardship and prejudice to husband, a direction for bearing the expenses for travel and litigation would be in order.

9. In the case at hand, the respondent asserted that he is suffering from 'Hypertension' and 'Diabetes Mellitus'. These are lifestyle diseases. It does not appear that the transfer of the proceeding from Nanded to Vaijapur would cause serious prejudice to the respondent in prosecuting the said matrimonial proceeding, especially, in view of the fact that proceeding initiated by the applicant is subjudice before the learned Magistrate. Scale of the comparative convenience tilts in favour of the applicant. Hence, I am persuaded to allow the application.

10. Thus, the following order.

ORDER

- i. Hindu Marriage Petition No. 132/2018 pending on the file of Family Court, Nanded stands transferred to the court of Civil Judge Senior Division, Vaijapur.
- ii. The parties shall appear before the court of Civil Judge, Senior Division, Vaijapur on 26-04-2021.

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iii. Having regard to the pendency of the proceeding the learned Civil Judge, Senior Division, Vaijapur is requested to make an endeavour to hear and decide the said petition as expeditiously as possible.

iv. The petition stands accordingly disposed of.

[N. J. JAMADAR, J.]

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