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**IN THE HIGH COURT OF BOMBAY AT GOA
TRANSFER APPLICATION No.1 of 2021**

Ms. Kanaka Dhirendra Thakker,
D/O Dhirendra Thakker,
Resident of Thakker House,
Vasco-Da-Gama.

... Applicant

V e r s u s

Mr. Suneet Lalgulab Chandavani,
R/440/15 Shahani Colony,
Mulund East, Mumbai 400081.

... Respondents

**Mrs. A. Agni, Senior Advocate with Ms. Jay Sawaikar, Advocate
for the Applicant**

**Mr. J. S. Kini with Ms. Sulekha Kamat, Advocate for the
Respondent**

CORAM: M. S. SONAK, J

Reserved on: 28th July 2021.

Pronounced on: 5th August 2021

O R D E R:

1. Heard Mrs. A. Agni, the learned Senior Advocate with Ms. Jay Sawaikar for the applicant, and Mr. J. S. Kini with Ms. S. Kamat, the learned counsel for the respondent.

2. This is an application seeking transfer of Hindu Matrimonial Petition No.2168 of 2020 pending before the Family Court at Bandra to the Court of Civil Judge Senior Division at Vasco Da Gama, Goa, so that, the same can be

taken up along with Matrimonial Petition No54 of 2020 instituted by the applicant-wife in the Court of Civil Judge Senior Division at Vasco-da-Gama, Goa.

3. On 29/6/2020, Mr. Kini made a statement that a praecipe had been filed before the Hon'ble the Chief Justice seeking transfer of the Goa case to Mumbai. Accordingly, the matter was adjourned to 20/7/2021. On 20/7/2021, again, Mr. Kini submitted that a praecipe has been moved and orders are expected. Today, when the matter was called up Mr. Kini submitted that no orders have been made as yet. Ms. Agni, the learned Senior Counsel for the applicant submits that this application be taken up for consideration as the applicant apprehends that the matter before the Bandra Court might proceed. Mr. Kini states that he too has no objection to the matter been taken up. Accordingly, with the consent of the learned counsel for the parties, the matter was heard on 28/7/2021. Mr. Kini submitted that the parties are exploring the possibility of a settlement and, therefore, orders may not be pronounced up to 5/8/2021.

4. In this matter, no objection was raised to the jurisdiction of this Court in considering this transfer application. In any case, in Transfer Application No.5 of 2018 dated 28/2/2019 (Coram: Nutan D. Sardesai, J), and the judgment and order dated 19/7/2018 in **Irene Blanch Khera & anr. Vs. Glenn John Vijay** reported in (2018 (6) Mh. L.J, 199), two learned Single Judges of this Court have taken the view that such an application is maintainable at Goa. These two judgments were followed in **Sakshi Krishnanath Gosavi Vs. Krishan Marutinath Gosavi** in Transfer Application NO.1 of 2020 decided on 13/7/2021 and proceedings from the Court in Maharashtra were ordered to be transferred to the Courts in Goa.

5. Mrs. Agni pointed out that the applicant on 12/10/2020 filed Matrimonial Petition No.54 of 2020 in the Court of Civil Judge, Senior Division at Vasco Da Gama (Goa Court) seeking restitution of conjugal rights. She pointed out that only thereafter, i.e., on 29/10/2020, the respondent-husband instituted Matrimonial Petition No.2168 of 2020 before the Family Court at Bandra. She submits that in **Sumita Singh Vs. Kumar Sanjay and anr. AIR 2002 SC 396**, the Hon'ble Supreme Court has held that the wife's convenience must be looked at when it comes to

considering transfer applications. She submits that though the applicant is an Architect, presently, she is not earning much. She submits that it will be quite traumatic for the wife to travel to Mumbai. She submits that the respondent has already surrendered the lease of the matrimonial home after the applicant had to return to Goa, on account of the serious illness of her grandmother. She, therefore, submits that it will be appropriate if the proceedings in the Bandra Court are transferred to the Vasco Court in Goa so that both the proceedings can be considered at the Vasco Court in Goa itself.

6. Mr. Kini, the learned counsel for the respondent submits that the applicant has made a false statement about her income and, therefore, this application must be dismissed. He submits that the parents of the applicant are millionaires and it is the applicant who is in a financially dominant position, as compared to the respondent. He submits that the respondent has made true disclosure of his income, but has pointed out that he has responsibilities towards his parents, etc. Mr. Kini submits that despite this, the respondent has offered to bear the transportation costs of the applicant to attend the case in the Bandra Court. He submits that the respondent will

also take on lease a single bedroom apartment in Mumbai if the applicant wishes to stay in Mumbai to contest and prosecute the legal cases. For all these reasons Mr. Kini submits that this transfer application may be dismissed.

7. In **Sumita Singh (supra)**, the Hon'ble Supreme Court has held that in a husband's suit against the wife, normally, the wife's convenience must be looked at. In this case, the applicant has alleged that the respondent's monthly income is Rs.6.00 lakhs. The respondent has not denied this but claimed that a substantial amount gets deducted towards income tax and, therefore, the respondent earns a net amount of Rs.4.00 lakhs per month, approximately. No doubt, the respondent has also stated that he has to look after his parents aged 80 and 74 years. He has also stated that he has to look after his father's sister who is aged 86 years.

8. The applicant has stated that the respondent has a brother, who also assumes financial responsibility towards the aged parents/relatives. In any case, having regard to the admission that the respondent earns a net income

of Rs.4.00 lakhs per month, surely, there will be no financial difficulty to the respondent to attend the proceedings at Vasco da Gama, Goa.

9. The applicant in this case has not suppressed details about her income. She has admitted that she was an architect earning some substantial amounts in Mumbai. She has, however, stated that presently in Goa, she is not earning sufficient. Besides, there is no dispute that when the applicant returned to Goa, the respondent surrendered the tenancy of the matrimonial home in Mumbai and has moved in with his parents. Therefore, at present, at least there is no separate matrimonial home in which the applicant can stay, should both the proceedings be transferred to Mumbai.

10. The respondent has pleaded that the applicant's family is "filthy rich" and in contrast, the respondent is from a middle-class family having a one-bedroom flat in the Mumbai suburbs, which is owned by his father on "pagdi system". In a matter of this nature, the convenience cannot be assessed on the riches of the applicant's family. The respondent cannot expect that the applicant's family provides for transport, stay, and other logistical support in Mumbai to attend the Court proceedings. Besides these are not

the only considerations in determining convenience. The strain involved in prosecuting or defending the litigations in Mumbai has to also be accounted for.

11. Mr. Kini's submission that there might be a danger to the respondent's life, on account of the financially dominant position of the applicant's family, deserves no acceptance. No material has been placed on record to substantiate such an apprehension. Mr. Kini has also submitted that the applicant has obtained her degree in Architecture from Pune and Masters's Degree from London. He has submitted that such a qualified architect earns at least Rs.12.00 lakhs to Rs.16 lakhs per year. He has submitted that the applicant had a Fixed Deposit of approximate Rs.23.00 lakhs when she was earning a monthly income of Rs.12,000/-.

12. At this stage, it is not possible to go by the potential earning capacity of the applicant. As of now, the respondent has no sufficient income to sustain the pressures of contesting and prosecuting the proceedings in Mumbai. The respondent's offer to bear the travel expenses or to arrange for an apartment in Mumbai, cannot be a good enough reason to require the

applicant to attend the proceedings in Mumbai. As noted earlier, though these are some of the relevant considerations, they are not the only relevant considerations in such matters.

13. Having regard to the material on record, the interests of justice will be served if both the matters are allowed to proceed at Vasco da Gama, Goa, i.e., the place where the applicant presently resides. The inconvenience which will occasion the applicant if she is required to attend the proceedings in Mumbai far outweighs any inconvenience which the respondent will have to face to attend the proceedings at Goa. The respondent has the financial means to attend the Court proceedings at Goa and the apprehensions about threats to his life etc. inspire no confidence whatsoever. If the respondent is prepared to spend an amount of almost Rs.3,60,000/- per month for renting a single bedroom flat in Mumbai, then, surely, he has the financial means to attend the proceedings in Goa.

14. Accordingly, the transfer application is allowed and the Matrimonial Proceedings No.2168 of 2020 in the Family Court at Bandra are transferred to the Court of Civil Judge Senior Division at Vasco-da-Gama, Goa. This

Matrimonial Petition no.2168 of 2020 is to be taken up along with Matrimonial Petition no.54 of 2020 instituted by the applicant herein and pending in the Court of Civil Judge Senior Division at Vasco da Gama, Goa. The Vasco Court must reasonably accommodate the Respondent in matters of dates etc. particularly during the pandemic times and have due regard to the work pressures faced by the respondent in Mumbai. The transfer application is disposed of in the aforesaid terms. There shall be no order as to costs.

15. The Registry to assist the applicant in presenting this order to the Family Court at Bandra so that the transfer of proceedings is suitably facilitated. The Applicant will also have to take the necessary steps in this regard.

MARIA AURA PEREIRA
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MARIA AURA PEREIRA
Date: 2021.08.05
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M. S. SONAK, J.