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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
MISC. CIVIL APPLICATION NO. 295 OF OF 2019**

Smt. Pooja Malav Khatiwala

....Applicant.

V/s

Mr. Malav Vipul Khatiwala

.....Respondent

Mr. Ashish J. Dubey for the Applicant.

Mr. Gautam Kanchanpurkar for the Respondent.

CORAM: NITIN W. SAMBRE, J.

DATE: JULY 16, 2021

P.C.:-

1] Mr. Dubey, the learned Counsel for the Applicant at the outset informs that application was filed through her father considering the special ability of the applicant. However, during pendency of the application, her father has expired and that being so, if not objected by other side, she should be permitted to pursue the application. Status of the applicant as that of specially abled person since is not objected, applicant is permitted to pursue her application.

2] Applicant appears to be specially abled person as she is deaf and dumb. Transfer of proceedings are sought from the Court of Civil Judge, Senior Division, Nashik to the Family Court, Bandra, Mumbai, in view of aforesaid hardship. Marriage was solemnized on March 2, 2016 and the proceedings are initiated after matrimonial discord.

3] The learned Counsel for the non-applicant would urge that proceedings of which transfer is sought are in the nature of restitution of conjugal rights and even if such proceedings are tried at present place, no prejudice is likely to be caused to the applicant-wife. Apart from above, he submits that the application needs to be rejected considering the short distance between the place where transfer is sought and the place where proceedings are pending.

4] The fact that the applicant is specially abled person i.e. she is deaf and dumb is not under dispute. As such, applicant is required

to attend the proceedings with escort who will be in a position to act as a translator. The aforesaid cause sufficiently establishes the issue of hardship in favour of the applicant.

5] Apart from above, the contention of the learned Counsel for the Respondent is, even if the applicant fails to attend restitution of conjugal rights proceedings, no prejudice would be caused, cannot be accepted as the applicant has every right to defend the said proceedings in accordance with law. As such, the said contention is also rejected.

6] In view of the hardship as is established, application stands allowed in terms of prayer clause 12(a) which reads as under:-

“12(a) that this Hon’ble Court be pleased to transfer the Marriage Petition no.278 of 2018 pending in the Court of Civil Judge (Sr. Division), Nashik, to the Family Court, Bandra, Mumbai.”

(NITIN W. SAMBRE, J.)