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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
MISC. CIVIL APPLICATION NO.99 OF 2021**

Mr. Jitesh Jayraj Nagapure Applicant.
V/s
Mrs. Shilpa Jitesh Nagapure Respondent.

**ALONGWITH
MISC. CIVIL APPLICATION NO.229 OF 2018**

Mrs. Shilpa Jitesh Nagapure Applicant.
V/s
Mr. Jitesh Jayraj Nagapure Respondent.

Mr. Ajinkya M. Udane for the Applicant in MCA/99/2021 and for Respondent in MCA/229/2018.

Mr. Pavan S. Patil for the Respondent in MCA/99/2021 and for the Applicant in MCA/229/2018.

CORAM: NITIN W. SAMBRE, J.

DATE: AUGUST 26, 2021

P.C.:-

1] Parties to present Applications got married on 5th July, 2010. Husband claims that he is 100% specially abled, being deaf and dumb. Today, at the age of 37, he is working with the Public Works Department of the State Government. Out of the aforesaid marriage daughter Sanchita was born who is about 9 years of age and in the

custody of wife.

2] It is the case of husband that on 3rd October, 2013, wife left his company with cash and started residing with her parents and thereafter on 18th May, 2015 resumed cohabitation with him. It is further claimed that on 5th November, 2015 wife again parted company of husband and for the marriage of brother of husband in 2016, resumed company of husband. During intervening period of these two events, it is claimed that studies of daughter Sanchita was affected adversely. It is further alleged that, again on 8th January, 2017 wife parted company of husband and thereafter initiated proceedings for the offence punishable under Sections 420, 498(A), 323,, 342, 506 read with Section 34 of the Indian Penal Code being Crime No.22 of 2017 on 24/1/2017. It is also claimed that on 3rd May, 2017 wife initiated proceedings under D.V. Act, being Misc. Application No.37 of 2017 pending on the file of Judicial Magistrate, First Class at Devni, District Latur.

3] Husband, as a consequence of aforesaid conduct of wife of parting his company, initiated proceedings under Section 13(1)(i-a) of

the Hindu Marriage Act for divorce on the ground of cruelty which is registered as P.A. No.13 of 2018 which is informed to be pending on the file of Family Court, Pune. The said proceedings, I am informed are proceeded ex-parte against wife.

4] In the aforesaid backdrop, respective parties have taken out following proceedings:-

Wife has initiated proceedings being Misc. Civil Application No. 229 of 2018 under section 24 of the Code of Civil Procedure, seeking transfer of divorce proceedings being P.A. No.13 of 2018 to the Court of Civil Judge, Senior Division, Udgir, Latur. Husband has initiated proceedings being Misc. Civil Application No. 99 of 2021 for transfer of D.V. proceedings i.e. M.A. No.37 of 2017 pending on the file of Judicial Magistrate, First Class Deoni, Tal. Deoni, District Latur to Family Court, Pune.

5] While trying to make out a case for transfer, learned Counsel for Applicant-wife would urge that Applicant-wife has already faced violence at the behest of husband and his parents which has resulted

into registration of crime being Crime No.22 of 2017 at Pune. According to him, Applicant-wife is a custodian of minor daughter. In the aforesaid backdrop, it will be difficult for her to attend the proceedings at Pune. It is further claimed that wife is not getting maintenance from husband and as such she is required to be dependent on her parents. That being so, divorce proceedings initiated by husband needs to be transferred to the Court of Civil Judge, Senior Division, Udgir, District Latur on the ground of extreme hardship.

6] While countering the aforesaid submissions, Mr. Udane, learned Counsel appearing for husband, would urge that divorce proceedings initiated by wife i.e. M.A. 37 of 2017 are pending on the file of Judicial Magistrate, First Class, at Tal Deoni, District Latur, are required to be transferred to the Family Court, Pune to be heard alongwith divorce proceedings i.e. P.A. No.13 of 2018. He would further claim that husband is 100% disabled as he is deaf and dumb and as such without any escort and interpreter, it will not be possible for him to attend the proceedings at Latur District which are initiated by wife. He would also urge that husband being public servant cannot get leave to attend the proceedings, as according to him, for attending

proceedings husband will be required to spent atleast two days. So as to support the claim of husband for transfer, he would also urge that on each date wife attends proceedings at Pune, husband shall incur her travel and out of pocket expenses to the tune of Rs 10,000/-.

7] Considered rival submissions.

8] Parties have made allegations against each other, thereby claiming that it is difficult for them to attend the proceedings at respective places i.e. proceedings initiated by wife at Latur and proceedings initiated by husband at Pune on the ground of threat perception. The fact that husband is 100% deaf and dumb and is serving in the Office of State Government is not in dispute. Distance between two places i.e. Pune and Latur where proceedings are pending at the behest of the Applicant is around 470 kilometers is also not in dispute.

9] Here is a case where both the parties are trying to establish claim of hardship in the matter of exercise of powers under Section 24 of the Civil Procedure Code. On one hand, wife is claiming her inability to

attend the proceedings at Pune being custodian of minor daughter, long distance of 500 kilometer one way and also threat perception, whereas husband claims hardship on the ground of his physical inability to travel at a distance of 470 kilometers one way. In such an eventuality, this Court is required to consider as to who will suffer comparatively more hardship.

10] Applicant-wife claims to be custodian of minor daughter and has started residing with parents at Latur. Fact remains that as she is residing with her parents, daughter can be taken care of by her parents. This Court is also required to be conscious of the fact that husband is disabled and has offered to bear expenses of Rs 10,000/- on each date wife attends proceedings at Pune.

11] In the aforesaid backdrop, in my opinion, issue of comparative hardship can be answered in favour of husband. However, fact that husband has offered to pay travel charges and out of pocket expenses cannot be ignored.

12] In the aforesaid backdrop, Misc. Civil Application No.229 of

2018 preferred by wife stand rejected, wheres Misc. Civil Application No.99 of 2021 initiated by husband is allowed subject to following conditions:-

(a) Applicant-husband is directed to deposit an amount of Rs. 25,000/- in the Family Court Pune in pending proceedings bearing No. P.A.13 of 2018 within a period of four weeks from today.

(b) Husband shall continue to maintain the said amount of Rs 25,000/- before the Family Court, Pune till final disposal of the said proceedings.

(c) Non-applicant/wife, on each date, as and when she attends the said proceedings physically, will be entitled to withdraw the amount of Rs 12,500/-.

(d) The Family Court, Pune in the above background, if so prayed by wife shall pass independent order on payment of expenses to the witness.

13] Both these Misc. Civil Applications are accordingly disposed of.

(NITIN W. SAMBRE, J.)