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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
MIIC. CIVIL APPLICATION NO.237 OF 2019**

Mrs. Suwarna Nilesh Rode Applicant.
V/s
Mr. Nilesh Balkrishna RodeRespondent

Mrs. Seema K. Chopda for the Applicant.
Mr. Mohan Pillai i/b Mrinal M. Pillai for the Respondent.

CORAM: NITIN W. SAMBRE, J.

DATE: AUGUST 24, 2021

P.C.:-

1] This is an application under Section 24 of the Code of Civil Procedure, seeking transfer of Divorce Petition No.A-302 of 2018 initiated by the Applicant-wife before the Family Court, Bandra under Section 13(1)(i-a) of the Hindu Marriage Act for dissolution of marriage and also Petition No.D-1 of 2019 initiated by the Respondent/husband under the provisions of the Guardian & Wards Act pending on the file of Family Court Bandra, Mumbai to Nashik.

2] On January 28, 2011 parties got married and the Applicant gave birth to a daughter by name Ananya on March 6, 2012.

3] I am informed that both the parties to the Application are Ayurvedic Doctors. Counsel for the Applicant Ms. Seema Chopda, while trying to make out a case of hardship and convenience of the Applicant, has invited attention of this Court to the notice issued by IDBI on October 11, 2018, thereby taking symbolic possession of the Flat purchased on loan where Applicant was residing. According to her, in view of the said notice of taking symbolic possession, Applicant preferred to leave the said premises and started residing at Nashik with her parents. She would claim that her parents are in advance age and financially not so sound. That being so, she being custodian of minor daughter aged about nine years, great hardship would be caused if she is made to attend the Court at Mumbai. It is also claimed that the Applicant is neither getting any maintenance nor arrears of maintenance are cleared by the non-applicant/husband.

4] While countering the aforesaid submissions, Mr. Mohan Pillai, learned Counsel for the Respondent would invite attention of this Court to the order dated February 7, 2019 passed by the Principal Judge, Family Court, Mumbai in proceedings proceedings being Petition No.A-302 of 2018 in the matter of deciding prayer for

injunction preferred by the Applicant. According to him, there are specific observations that Applicant-wife has voluntarily shifted to Nashik as the Applicant has failed to demonstrate taking over physical possession of the Flat by the said Bank. He would further claim that entire payment of maintenance is already cleared. He would submit that there are about seven cases initiated and pending at the behest of the Applicant against the non-applicant in Mumbai Court and that being so, since the Applicant is attending all the proceedings in Mumbai, no case for transfer is made out. He would also invite attention of this Court to the observations made in the order dated March 1, 2019 of this Court while deciding Writ Petition No.12347 of 2018 preferred by the non-applicant and Writ Petition No.2 of 2019 initiated by the Applicant-wife, particularly in para 15. According to him, non-applicant is falsely implicated in criminal case and non-applicant is willing to sort out the issues including the issue of accommodation.

5] Considered rival submissions.

6] Issuance of notice on October 11, 2018 by the Bank taking over

symbolic possession is not in dispute.

7] Fact remains that proceedings of which transfer is sought i.e. divorce proceedings were initiated by the Applicant, whereas custody proceedings were initiated by the non-applicant. Both the proceedings are pending in the Family Court at Bandra, Mumbai.

8] The distance between the Nashik and Mumbai is hardly of travel time of about three hours and better train and road connectivity is available.

9] Applicant is admittedly Ayurvedic Surgeon by profession and claimed to have shifted to Nashik to her parent's house. Of-course, Applicant is custodian of minor daughter aged about 9/10 years. However, this will not prompt this Court to infer that Applicant cannot attend the proceedings in Family Court, Bandra, Mumbai which were initiated by her. In fact, there are other proceedings viz prosecution under POCSO Act and prosecution under Section 498-A initiated at the behest of the Applicant, pending adjudication in Mumbai.

10] In the aforesaid backdrop, this Court is of the view that the Applicant cannot be considered to be facing hardship in attending the proceedings in Mumbai, as this Court intends to order payment of the travel charges to the Applicant by non-applicant, even though same was seriously objected by the Counsel for non-applicant. As such, the following order is passed:-

O R D E R

(i) The non-applicant shall within one week from today, in writing, furnish all the details of the maintenance amount deposited in this Court and Family Court to the Applicant and the Applicant-wife shall be entitled to withdraw the entire amount of maintenance deposited in this Court and the Courts below and towards the maintenance of the minor daughter.

(ii) Both the Applications i.e. the Application under the provisions of Guardian and Wards Act and under Section 13 of the Hindu Marriage Act

are directed to be tagged together and decided by the Family Court, Bandra, Mumbai.

(iii) Non-applicant is directed to deposit an amount of Rs 5000/- in the Family Court, Bandra, Mumbai in pending Divorce Proceedings within a period of four weeks from today.

(iv) On each date, when Applicant attends the proceedings, she will be entitled to withdraw an amount of Rs 2500/- towards her travel and out of pocket expenses, provided she physically attends the proceedings.

(v) Non-applicant shall maintain balance of Rs 5000/- in in the Family Court, Bandra, Mumbai in pending Divorce Proceedings till final disposal of both the aforesaid proceedings.

(vi) If the aforesaid order is not complied with

by the non-applicant of deposit of the amount within stipulated period and if he fails to continue to maintain balance as directed hereinabove, present application automatically shall stand allowed in terms of prayer clause 8(a).

(vii) Application stands disposed of in the above terms.

(NITIN W. SAMBRE, J.)