

BDP-SPS-TAC

BHARAT
DASHARATH
PANDITDigitally signed by
BHARAT
DASHARATH
PANDIT
Date: 2021.09.03
12:52:15 +0530

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
MISC. CIVIL APPLICATION NO.262 OF 2019**

Mrs. Manisha Vijay Jadhav ... Applicant.
V/s
Shri Vijay Prakash JadhavRespondent

Mr. Raju M. Yamgar for the Applicant.
Mr. Jayendra D. Khairnar for the Respondent.

CORAM: NITIN W. SAMBRE, J.

DATE: AUGUST 31, 2021

P.C.:-

1] After matrimonial discord, husband initiated proceedings in Nashik Court being Marriage Petition No.A-381 of 2018 which is for for restitution of conjugal rights. I am informed that subsequent to above, wife has initiated D.V. Act proceedings, so also proceedings for divorce in the court at Kalyan. Transfer of restitution of conjugal rights proceedings is sought by the wife on the ground of hardship as, according to her, the respondent-husband is otherwise also required to attend the D.V. Act proceedings and divorce proceedings at Kalyan Court. My attention is invited to the fact that Applicant is a custodian of four years old daughter. Drawing support from the judgment of the Apex Court in the matter of *Reena Bahri vs. Ajay Bahri* reported in

(2002) 10 SCC 136, it is claimed that even if Respondent offers travel charges and out of pocket expenses still order of transfer has to be passed considering the hardship faced. In response to Court's query, Counsel for the Respondent concedes that on each date Applicant physically attends the proceedings conveyance charges and out of pocket expenses of Rs 2500/- will be paid. It is also claimed that Family Court at Nashik can order payment of appropriate compensation to the witnesses of the Applicant towards travel and out of pocket expenses.

2] Considered rival submissions.

3] The judgment relied upon by the Applicant of the Apex Court in the matter of *Reena Bahri* cited supra will be hardly of any assistance, as in the said case transfer of proceedings was sought from Delhi to Bombay, whereas in the case in hand transfer of the proceedings is sought from Nashik to Kalyan and distance between these two places is hardly about 100 kilometers one way.

4] Apart from above, even if it is considered that applicant-wife is a

custodian of four years old daughter, Court cannot be oblivious to the fact that wife initiated both the proceedings subsequent to proceedings for restitution of conjugal rights by non-applicant husband.

5] Fact remains that Applicant is residing with her parents and parents can take care of daughter for limited time for which Applicant will attend the Court at Nashik which cannot be ignored. As such, following order is passed:-

O R D E R

(i) Non-applicant husband shall deposit an amount of Rs 5000/- before the Family Court, Nashik in pending proceedings being Marriage Petition No.A-381 of 2018.

(ii) On each date applicant-wife attends the said proceedings physically, she will be entitled to withdraw amount of Rs 2500/- and non-applicant/husband shall top up the said amount to the extent of maintaining balance of Rs 5000/- till disposal of the said proceedings.

(iii) Payment of compensation towards travel and

out of expenses to each of the witnesses of the Applicant in the said proceedings is kept open to be decided by the Family Court at appropriate stage which non-applicant/husband undertakes to deposit in the Family Court, once such order is passed.

(iv) Application is accordingly disposed of.

(NITIN W. SAMBRE, J.)