

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

MISC. CIVIL APPLICATION NO. 04 OF 2022

Sau. Ashwini w/o Sujit Kagne

Applicant

Versus

Sujit s/o Balaji Kagne

Respondent

Mr. D. A. Karnik, advocate holding for Mr. Vivek Dhage, advocate
for the Applicant

Mr. N. K. Tungar, advocate for the Respondent.

CORAM : SANDIPKUMAR C. MORE J.

DATE : 30th September, 2022.

PC :

Heard rival submissions and perused the documents
on record.

The applicant-wife is seeking transfer of Petition No.A-
534 of 2021, filed by Respondent-husband for restitution of
conjugal rights in Family Court at Aurangabad, to Family Court at
Buldhana.

The learned Counsel for the applicant submits that the
applicant-wife was harassed by the Respondent-husband and his
family members to such an extent that she had to file Criminal
Application No. 45 of 2021 under the provisions of Protection of
Women from Domestic Violence Act, 2005, before the learned Chief

Judicial Magistrate, Buldhana. He further submits that the applicant-wife is not having any independent source of income and the parents of applicant, due to old age, are not keeping good health. As such, it would be difficult for the applicant to attend the dates at Aurangabad since there is no accommodation for her at the said place. He further submits that considering the allegations levelled against the Respondent-husband and his family members in the DV proceedings, it would not be advisable for the applicant to come to Aurangabad since a threat of life is there.

On the contrary, the Respondent-husband strongly opposed the application by filing affidavit-in-reply and contended that the applicant being a well educated lady having good communication skill can very well attend the dates of the proceedings at Aurangabad and since no child begotten out of the wedlock, there is no impediment for her to travel. The learned Counsel submits that Respondent-husband is residing at Nashik and, therefore, Aurangabad, being a center place, is always convenient for both the parties. He further submits that there is nothing in the application that if applicant comes to Aurangabad, she will be harassed. The learned Counsel also relied on the following judgments:

- 1 **In the case of Damyanti Devi Vs. Indrajeet,** 2007 DGLS (SC) 1097; and

2 Dipika Agrawal @ Dipika Khaitan Vs. Rishi Agarwal, MANU/WB/1549/2019.

The ratio of the aforesaid judgments is that when there are no pleadings in the transfer application that the applicant-wife would be harassed at the hands of the Respondent-husband or his family members, then such transfer cannot be permitted. At the most, certain conditions in respect of paying charges for attending the dates of proceedings can be imposed. It is also observed in the said judgments that the wife's convenience cannot be seen every time if the circumstances demand otherwise.

However, it is pertinent to note that the applicant is not having any independent source of income. Moreover, even though there is no pleading as regards danger to life in the petition itself, but the copy of the DV proceedings certainly indicates as to what extent the applicant-wife is harassed by the Respondent-husband and his family members. Moreover, they are also attending the dates of DV proceedings at Buldhana and, therefore, the observations made in the aforesaid judgments are not helpful to the Respondent-husband in the instant case.

In view of the same, I pass the following order:

- (i) Misc. Civil Application is hereby allowed and Marriage Petition No.A-534 of 2021, pending in Family Court, Aurangabad, is hereby transferred to the Family Court, Buldhana.

(ii) The Respondent-husband is directed to attend the said proceedings at Aurangabad on 21st October, 2022.

(iii) Misc. Civil Application is accordingly disposed of.

(SANDIPKUMAR C. MORE)
JUDGE

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