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

MISC. CIVIL APPLICATION NO.28 OF 2020

FARJANA PARVEEN FAKIR MASTAN SHAH
VERSUS
FAKIR MASTAN SHAH MEHBOOB SHAH

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Mr H. V. Tungar, Advocate for applicant;

Ms M. V. Narwade, Advocate for respondent

CORAM : SMT. BHARATI DANGRE, J.

DATE : 16th February, 2022

PER COURT:

1. Heard the learned Counsel for the applicant and learned Counsel for the respondent.

2. The applicant wife has sought transfer of the proceedings filed by the respondent husband for restitution of conjugal rights in the Court of learned Civil Judge Senior Division, Gondiya in the form of Regular Civil Suit No.231/2019. She seeks transfer of the said proceedings to the Family Court at Dhule, where she has already instituted the Petition bearing No.E-130/2019 under Section 125 of the Code of Criminal Procedure and she has also filed Criminal Misc. Application No.778/2019 before the learned

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Chief Judicial Magistrate, under Section 12 of the Protection of Women from Domestic Violence Act, 2005.

3. On the last date of hearing, pursuant to the statement made by the learned Counsel for the respondent that he suffers from heart ailment and in the wake of the documents pertaining to his medical treatment being placed on record, a specific statement is made by the learned Counsel for the applicant to the effect that the said medical ailment is old one and he is regularly attending the proceedings in the Court at Dhule. He was, therefore, directed to substantiate his submission.

Accordingly, the learned Counsel for the respondent has placed on record Roznama of the case No.E-130/2019 in the Family Court, Dhule, where it is apparent that at least on 12 dates, he has attended the proceedings before the Principal Judge at Dhule. The said Roznama is taken on record and marked 'X' for identification.

4. The applicant wife is posed with the difficulty, since there is a child, who is now approximately four years old and undertaking the journey of 700 kms. to attend the proceedings at Dhule is, the inconvenience projected by her. Apart from this, the expenses

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which she will have to incur to undertake the journey, as well as for lodging and boarding.

5. On the earlier date, I have recorded that the parties must arrive at a middle way, so that the proceedings filed by them can be disposed of expeditiously by minimum inconvenience being caused either of them.

Keeping in mind that the applicant and the respondent are poles apart i.e. distance of 700 kms, interest of justice would be better served to both, if the proceedings filed by the respondent husband for restitution of conjugal rights are transferred to the Family Court at Dhule, where the proceedings filed by the applicant wife under Section 125 of the Criminal Procedure Code are already pending. Apart from this, the proceedings filed by her under Section 12 of the the Protection of Women from Domestic Violence Act, 2005, before the learned Chief Judicial Magistrate can also be transferred to the Family Court at Dhule, with a direction being issued to the Family Court, Dhule, to adjudicate all the proceedings collectively, which would earn two benefits; the first being the inconvenience to the parties can be minimized

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and second, the conflicting orders can be avoided, plus the proceedings can be expeditiously decided.

6. In the wake of the above, I deem it necessary to pass following order :

I) Regular Civil Suit No.231/2019, filed by the respondent husband in the Court of learned Civil Judge Senior Division, Gondiya, shall be transferred to the Principal Judge of the Family Court, Dhule.

II) Criminal Misc. Application No.778/2019, filed in the Court of learned Chief Judicial Magistrate at Dhule, under Section 12 of the Protection of Women from Domestic Violence Act, 2005, shall also be transferred to the Principal Judge of the Family Court, Dhule.

III) The Principal Judge of the Family Court, Dhule, is requested to assign all the three proceedings preferably to the same Court, so that any conflicting order can be avoided and to speed up the proceedings.

IV) The learned Family Judge assigned with the proceedings, shall ensure that the presence of the respondent husband shall not be insisted upon on each and every date of hearing, except when it is necessary for the purpose of recording his evidence/cross-examination. If the video conferencing facility is available with the

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Family Court at Dhule, the learned Judge is requested to avail the said facility and permit appearance of the respondent husband through video conferencing, since his heart ailment which has been projected, is permanent one and being a heart patient, he has to be careful in undertaking the long and strenuous journey.

V) On clubbing of the petitions together, the learned Judge of the Family Court shall make every endeavour to dispose of all the three proceedings within a period of one year from today, since they are filed in the year 2019.

VI) The Record and Proceedings with the respective Courts shall be transmitted forthwith to the Family Court, Dhule.

With the aforesaid directions, the Misc. Civil Application is allowed.

(SMT. BHARATI DANGRE, J.)

sjk