

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

CRIMINAL APPLICATION NO.359 OF 2021

Rahul s/o Gautam Athwale
Age: 35 yrs., Occu.: Service,
R/o. Permanent Address – Yogeshwari Vrundawan,
Row House A/4, Malhar Chowk, Garkheda Parisar,
Aurangabad.
Previous Address -
House No.4/3173 Shivpratap Nagar,
Near Mhasoba Mandir, Station Road,
Vaijapur, Dist.Aurangabad.

..Applicant
(Orig. Respondent)

VERSUS

Smt.Ruchira w/o Rahul Athwale
Age: 30 yrs., Occu.: Now Temporary Job,
R/o – C/o Mukesh Gajbhiye
104, Meghdanush Appartment,
Angulimal Nagar, Nagpur 440 026.

..Respondent
(Ori. Petitioner)

...

**WITH
CIVIL APPLICATION NO.6520 of 2021
IN MCA/256/2019**

Rahul s/o Gautam Athwale
Age – 34 yrs., Occu.: Service,
R/o. At present House No.26/1055,
Dwarka, Gajanan Nagar, Bypass Road,
Majalgaon, Dist.Beed.

..Applicant
(Orig. Respondent)

VERSUS

Smt.Ruchira w/o Rahul Athwale
Age – 29 yrs., Occu.: Nil,
R/o – C/o Mukesh Gajbhiye,
104, Meghdanush Apartment,
Angulimal Nagar, Nagpur – 440 026.

..Respondent
(Ori. Petitioner)

...

**WITH
MISCELLANEOUS CIVIL APPLICATION NO.256 OF 2019**

Rahul s/o Gautam Athwale
Age - 33 yrs., Occu.: Service,
R/o House No.4/3173, Shivpratap Nagar,
Near Mhasoba Mandir, Station Road,
Vaijapur, Dist.Aurangabad.

..Applicant
(Orig. Respondent)

VERSUS

Smt.Ruchira w/o Rahul Athwale
Age: 28 yrs., Occu. Nil,
R/o - C/o Mukesh Gajbhiye,
104, Meghdanush Apartment,
Angulimal Nagar, Nagpur 440 026.

..Respondent
(Ori. Petitioner)

...
**WITH
MISCELLANEOUS CIVIL APPLICATION NO.159 OF 2021**

Smt.Ruchira w/o Rahul Athwale
Aged about 28 years, Occu.; Nil,
R/o. C/o.Mukesh Gajbhiye,
104, Meghdanush Apartment,
Angulimal Nagar, Nagpur - 440026.

..Applicant
(Ori. Respondent)

VERSUS

Rahul s/o Gautam Athwale
Aged: 33 years, Occu.: Service,
R/o. C/o. House No.4/3173, Shivpratap Nagar,
Near Mhasoba Mandir, Station Road,
Vaijapur, Dist.Aurangabad.

..Respondent
(Orig. Applicant)

...
Advocate for Applicant - Husband : Mr.Ajit M. Gholap
Advocate for Respondent - Wife : Mr.Ruturaj C. Patil

...
CORAM : SMT. VIBHA KANKANWADI, J.

DATE OF RESERVING JUDGMENT : 8th April, 2022

DATE OF PRONOUNCING JUDGMENT : 7th June, 2022

JUDGMENT :-

1. Rule. Rule is made returnable forthwith. By consent of the parties, heard finally.

2. All these cases are between husband and wife and they have three different matrimonial proceedings at different Courts which they want to get transferred. The applicant husband - Rahul Gautam Athwale is permanently residing at Aurangabad, however, during the course of submissions, it has been stated that now he has been posted at Majalgaon, Dist.Beed. He has filed Criminal Application No.359 of 2021 for transfer of E-Petition No.258 of 2020 filed by respondent wife - Smt.Ruchira Rahul Athwale under Section 125 of the Code of Criminal Procedure before the Family Court, Nagpur to Family Court at Aurangabad. He has also filed Misc. Civil Application No.256 of 2019 for transfer of Hindu Marriage Petition bearing No.A-1255 of 2019 pending on the file of Family Court, Nagpur to the Court of Civil Judge Senior Division, Vaijapur, District Aurangabad. Misc. Civil Application No.159 of 2021 has been filed by respondent wife - Smt.Ruchira Rahul Athwale for transfer of Hindu Marriage Petition No.18 of 2021 filed by the applicant husband - Rahul before 2nd Joint Civil Judge Senior

Division, Vaijapur to the Family Court at Nagpur. Civil Application No.6520 of 2021 has been filed in Misc. Civil Application No.256 of 2019 for amendment for addition of paragraph No.8-A and for substituting prayer clause [B].

3. It will not be out of place to mention here that this Court in Misc. Civil Application No.159 of 2021 as well as in Misc. Civil Application No.256 of 2019 on 7th January 2022 had referred the matters for mediation, but the report has been received that the mediation has failed.

4. Heard Mr.A.M.Gholap, learned Advocate for applicant husband and Mr.R.C.Patil, learned Advocate for respondent wife.

5. Mr.Gholap, learned Advocate for the applicant husband relied on the decision in *Neelam Bhatia Vs. Satbir Singh Bhatia [(2004) 13 Supreme Court Cases 436]* wherein it has been held that “*transfer petition can be disposed of by directing respondent husband to bear travel expenses of petitioner wife and one person accompanying her, or of her father in case he travels alone to attend the proceedings*”. Further, it is submitted that in *Ms Deepa Vs. Mr.Kiran R.Varnekar [Order dated 2nd December, 2013 in C.P. No.84 of 2013]*, the Karnataka High

Court observed that *“the respondent may find it difficult to avail leave frequently. He has to work and earn. It is not in dispute that he is already paying monthly maintenance as ordered by the Court. If the travel expenses and other incidental charges of the petitioner are met by the husband it will not be necessary to transfer the matrimonial case filed for restitution of conjugal rights by the husband”*.

6. The learned Advocate for the applicant husband submitted that the present applicant, who is also a Deputy Branch Manager in State Bank of India is having several responsibilities and he cannot leave the branch. Therefore, he is ready to pay travel expenses of the respondent wife as well as any person accompanying her. Further, it is submitted that the respondent wife has taken up private job on temporary basis at Nagpur and she is drawing salary of Rs.15,000/- per month. Under such circumstances, it is necessary to transfer the two cases which she has filed at Nagpur to the Family Court at Aurangabad where the applicant husband can attend conveniently.

7. Per contra, the learned Advocate appearing for the respondent wife relied on the following citations :-

1. *Annamma Abraham (Sherly) Vs. Abraham Jacob, [(2000) 10 Supreme Court Cases 275]*.

2. *Sumita Singh Vs. Kumar Sanjay and Another [(2001) 10 Supreme Court Cases 41].*

3. *Soma Choudhury Vs. Gourab Choudhary, [(2004) 13 Supreme Court Cases 462].*

4. *Rajani Kishor Pardeshi Vs. Kishor Babulal Pardeshi, [(2005) 12 Supreme Court Cases 237].*

5. *Sangmitra w/o. Ramkant Royalwar Vs. Ramakant s/o. Gangaram Royalwar, [2009 (1) Mh.L.J. 303].*

6. *Anita Balkrishna Barge Vs. Balkrishna Sopan Barge [2011 (1) Mh.L.J. 518].*

7. *Sandhya Rajaram Lokhande Vs. Rajaram Ganu Lokhande, [(2012) 5 Bom CR 34].*

8. *Nilima Mahesh Muley Vs. Mahesh Madhavrao Muley, [2012 (6) Mh.L.J. 453].*

9. *Snehal Omprakash Kothekar Vs. Omprakash Domaji Kothekar, [2013 (6) Mh.L.J. 711].*

10. *Poonam Manish Lath Vs. Manish Kashiprasad Lath, [2017 (3) Mh.L.J. 422].*

8. In all the above cases, it can be seen that the convenience of the wife was considered and the petitions were transferred to the place of convenience of the wife.

9. At the outset, it is to be noted that marriage petition which the applicant husband has filed before the Civil Judge Senior Division, Vaijapur, Dist.Aurangabad, was on the ground that he was posted at Vaijapur, but then now he is transferred to Majalgaon in District Beed, still he wants the case to be transferred to Family Court Aurangabad as he has given his permanent address of Aurangabad. Any way he will have to obtain leave on the date fixed before the Family Court, Aurangabad, if at all the cases are transferred there, as his present posting is at Majalgaon, Dist.Beed. No doubt Aurangabad is near to Majalgaon, Dist.Beed, but the respondent wife will have to come all the way from Nagpur to Aurangabad each time. The respondent wife has filed two proceedings before the Family Court at Nagpur. She has prayed for judicial separation under Section 10 of the Hindu Marriage Act and for maintenance whereas the proceeding filed by the applicant husband before the Civil Judge Senior Division, Vaijapur is for divorce.

10. In the catena of judgments, Hon'ble Supreme Court has considered the convenience of the wife in case of transfer of petitions on the civil side. Here not only relief under the Civil Act has been claimed by the applicant husband as well as the

respondent wife but the respondent wife is also claiming relief under Code of Criminal Procedure, though it is *quasi civil* in nature. In *Rajani Kishor Pardeshi* (supra) similar offer was made by the husband that he will pay the travel expenses of the wife and there is no need to then transfer the cases but the Hon'ble Supreme Court has observed that "*In this type of matter, the convenience of the wife is to be preferred over the convenience of the husband*". In other cases decided by this Court as well as the Hon'ble Supreme Court relied by the learned Advocate for the respondent wife, similar view has been taken that the convenience of the wife will have to be considered. Under such circumstance, one factor definitely will have to be highlighted that all the three matters will required to be brought before one Court in order to avoid any contrary decision and also to avoid multiplication of proceedings. Therefore, when convenience of wife is required to be considered, Misc. Civil Application No.159 of 2021 deserves to be allowed and Criminal Application No.359 of 2021 as well as Misc. Civil Application No.256 of 2019 deserves to be rejected. The petition filed by the applicant husband before the Civil Judge Senior Division, Vaijapur deserves to be transferred to the Family Court at Nagpur for its disposal alongwith Hindu Marriage Petition No.A-1255 of 2019 and E-Petition No.258 of 2020. Hence, the following order is passed :

ORDER

(i) Criminal Application No.359 of 2021 and Misc. Civil Application No.256 of 2019 stand rejected.

(ii) Misc. Civil Application No.159 of 2021 stands allowed.

(iii) Hindu Marriage Petition No.18 of 2021 pending before the learned 2nd Joint Civil Judge, Senior Division, Vaijapur, Dist.Aurangabad stands transferred to Family Court, Nagpur to be tried alongwith Hindu Marriage Petition No.A-1255 of 2019 and E-Petition No.258 of 2020.

(iv) Rule is discharged in respect of Criminal Application No.359 of 2021 and Misc. Civil Application No.256 of 2019.

(v) Rule is made absolute in respect of Misc. Civil Application No.159 of 2021.

(vi) Civil Application No.6520 of 2021 is disposed of.

(vii) No order as to costs.

(SMT. VIBHA KANKANWADI)
JUDGE