

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

MISC. CIVIL APPLICATION NO. 73 OF 2020

Sarika w/o Nilesh @ Siddharth Naphade ...Applicant

Versus

Nilesh @ Siddharth s/o Subhash Naphade ...Respondent

.....

Mr. Vikrant Valse h/f Mr. T. M. Venjane, Advocate for the applicant
Mr. N. J. Sonune, Advocate for respondent-sole

.....

AND

MISC. CIVIL APPLICATION NO. 7 OF 2021

Sarika w/o Nilesh @ Siddharth Naphade ...Applicant

Versus

Nilesh @ Siddharth s/o Subhash Naphade ...Respondent

.....

Mr. Vikrant Valse h/f Mr. T. M. Venjane, Advocate for the applicant
Mr. N. J. Sonune, Advocate for respondent-sole

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CORAM : BHARATI H. DANGRE, J.

DATE : JANUARY 20TH, 2022

PER COURT : -

1. The two Misc. Civil Applications filed by the applicant/wife seek transfer of two proceedings filed by the respondent-husband to the Family Court at Aurangabad, where she herself has instituted an

application for maintenance, deserve to be allowed in the light of the consent accorded by the Counsel appearing for the respondent-husband.

2. Perusal of the two applications reveal that the respondent-husband has filed Petition No. A-2555/2019 before the Family Court at Bandra for dissolution of marriage and also filed Civil Misc. Application No. 66/2020 before the Principal District Judge at Buldhana under Section 12 of the Guardians and Wards Act, 1890.

3. The applicant/wife, who is residing at Aurangabad in her parental house with her daughter, has also instituted two proceedings; PWDVA No. 451/2019 before the Judicial Magistrate First Class, Aurangabad by invoking the relevant provisions of the Protection of Women from Domestic Violence Act, 2005 [hereinafter referred to as "Domestic Violence Act"]. She has also filed Petition No. E-21/2020 before the Family Court at Aurangabad, claiming maintenance for herself and for her daughter.

4. In the spectrum of the aforesaid proceedings pending between the parties *inter se*, the wife seek transfer of the proceedings filed by the respondent-husband to the Family Court at Aurangabad

and since the husband has now consented for the proceedings being transferred to the Family Court at Aurangabad, the Misc. Civil Applications deserve to be allowed and made absolute in terms of the reliefs sought therein.

5. Since the Petition No. A-2555/2019 filed in the Family Court at Bandra pertains to the year 2019 and on its transfer to the Family Court at Aurangabad, the only request made by the learned Counsel for the respondent-husband who has instituted the proceeding, is expeditious disposal of the same. This relief cannot be granted to the husband since the proceedings are pending since the year 2019. The Civil Misc. Application pending before the Principal District Judge, Buldhana under Section 12 of the Guardians and Wards Act, 1890 can also be adjudicated by the Family Court at Aurangabad and hence both the aforesaid proceedings are transferred to the Family Court at Aurangabad, where the proceeding filed by the wife in the form of Petition No. E-21/2020 is also pending. As far as the proceedings under the Domestic Violence Act filed before the Judicial Magistrate First Class, Aurangabad are concerned, since it is settled position of law that the Family Court, by virtue of its powers conferred under Section 23 of the Domestic Violence Act, is competent to grant the relief under the Domestic

Violence Act and on a detailed comparison of the provisions of both the enactments, the powers to be exercised by the Magistrate in the proceedings under the Domestic Violence Act, can also be exercised by a Family Court.

. In the wake of the above, even the proceedings under the Domestic Violence Act filed by the applicant/wife before the Judicial Magistrate First Class, Aurangabad shall be transferred to the Family Court at Aurangabad.

. Upon transfer of these proceedings, the Principal Judge of the Family Court at Aurangabad is requested to assign all the matters preferably to the same court so as to avoid any conflicting orders and which can minimize the litigating time by permitting common evidence to be led on common questions involved. The Judge of Family Court to whom the matters shall be assigned, shall make every endeavour to dispose off the proceedings within a period of one year from today.

6. The Misc. Civil Applications are accordingly disposed off.

[BHARATI H. DANGRE]
JUDGE