

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

963 MISC.CIVIL APPLICATION NO.168 OF 2021

VAJEEHA KHAN RIZWAN KHAN PATHAN
VERSUS
RIZWAN KHAN MOOSA KHAN PATHAN

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Advocate for Applicant : Mr. A. P. Bhandari h/f
Mr. M. B. W. Khan

Advocate for Respondent : Mr. R. S. Wani

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**CORAM : SANDIPKUMAR C. MORE, J.
DATED : 28/09/2022.**

P. C. :

1. Leave to correct prayer clause -B by inserting Family Court, Aurangabad in the place of Civil Judge (Senior Division) Aurangabad.
2. Heard rival submissions. Also perused the say of respondent-husband alongwith rejoinder and sur-rejoinder.
3. The petitioner - wife is claiming transfer of suit bearing RCS No. 39 of 2021 filed by the respondent – husband in the Court of Civil Judge (S.D.) Nandurbar to the Family Court at Aurangabad on the ground that it is difficult for her to attend the aforesaid suit at Nandurbar since it is almost 275 Kms. from Aurangabad where she is residing presently. The learned counsel for the petitioner submits that after the marriage, petitioner – wife was ill-treated by the respondent – husband and his family members and therefore, she compelled to reside at house of her parents at Aurangabad. It

is further submitted on her behalf that she has filed two proceedings at Aurangabad, one under the Domestic Violence Act before Chief Judicial Magistrate, Aurangabad and another for getting maintenance under Section 125 of Cr.P.C. by way of E-Petition No. 166 of 2022 before Family Court, Aurangabad.

4. On the contrary, the learned counsel for respondent – husband strongly opposed the application on the ground that the petitioner-wife can very well attend the court at Nandurbar since there is convenient bus service for the same from Aurangabad. According to him, he is ready to provide all the travelling charges and other charges to the petitioner-wife. Besides these submissions, he also relied on following citations :

1. ***(2004) 13 Supreme Court Cases 411 in case of Teena Chhabra vs. Manish Chhabra;***
2. ***(1979) 4 Supreme Court Cases 358 in case of Indian Overseas Bank, Madras vs. Chemical Construction Company and others and***
3. ***(2005) 12 Supreme Court Cases 236 in case of Priyanka Batra vs. Manish Batra.***

5. It is significant to note that the petitioner-wife has already filed two proceedings against respondent-husband and he is attending those proceedings. Further it was brought to the notice that the respondent-husband has also filed one civil miscellaneous application before the concerned District Court at Aurangabad bearing CMA No. 133 of 2021 for getting custody of children. As such, it can be seen that the respondent-husband is attending the dates of aforesaid proceedings and now only one proceeding between the parties is pending in court at Nandurbar.

6. During the pendency of this petition, it was also brought to the notice that respondent-husband has re-married and living at Nandurbar with his second wife. Be that as it may, when the only proceeding out of four proceedings between the parties is pending at Nandurbar, it would be difficult for petitioner-wife to attend each and every date of the said proceeding by travelling a distance of almost 550 Km. per date. Obviously, there are provisions in law that she can claim cost of that litigation and convenience charges along with *pendent-lite* alimony. However, since the husband is already attending the dates of the proceedings at Aurangabad, then it would be convenient for the petitioner-wife to attend the date of restitution petition if it is transferred to Family Court Aurangabad from the Court of Civil Judge (Senior Division), Nandurbar.

7. No doubt the Hon'ble Apex Court in the case of **Teena Chhabra vs. Manish Chhabra** has dismissed the transfer petition of wife by directing the husband to provide train fare at Rs.500/- towards incidental expenses to wife. However, considering the facts of this case, when the three proceedings are already pending at Aurangabad between the parties the aforesaid observation is not helpful to the respondent-husband. Moreover, such observation needs to be considered by taking into consideration facts of each case. As such, following order is passed.

ORDER

- A) The application is hereby allowed and the suit bearing RCS No.39 of 2021 pending in the court of learned Civil Judge (Senior

Division) Nandurbar is hereby transferred to the Court of Family Court, Aurangabad.

- B) The respondent-husband is directed to appear before Family Court at Aurangabad on 17/10/2022.
- C) The Family Court at Aurangabad is directed to dispose the aforesaid suit filed by the respondent husband simultaneously with the petition filed by petitioner wife bearing E-Petition No. 166 of 2022 as early as possible.
- D) The miscellaneous civil application is accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)