

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

MISC. CIVIL APPLICATION NO. 181 OF 2022

Vaishali w/o Chetan Baheti

Applicant

Versus

Chetan s/o Anandlal Baheti

Respondent

Ms. Ashlesha V. Kulkarni, advocate for the Applicant
Mr. A. N. Irpatgire, advocate with Mr. S. G. Rudrawar,
advocate for the Respondent.

CORAM : SANDIPKUMAR C. MORE, J.

DATE : 25th November, 2022.

PC :

1 Heard learned Counsel for respective parties.

2 On the last date, learned Counsel for the respondent-husband, after completion of the arguments, had sought adjournment to clarify the position in respect of Section 23 (3) of the Code of Civil Procedure, which was relied upon by the learned Counsel for the applicant-wife.

3 According to the learned Counsel for the respondent,

this Court is not having any jurisdiction to transfer the Petition filed by the husband at Family Court Aurangabad to the Court at Indore, as claimed by the applicant-wife. He placed reliance on the judgment of the Hon'ble Apex Court in the case of **Durgesh Sharma Vs. Jayshree**, reported in (2008) 9 SCC 648, wherein following observations are made:

“46 Having considered the scheme of the Code as amended from time to time, in our judgment, the law relating to transfer of cases (suits, appeals and other proceedings) is well settled. It is found in Sections 22 to 25 of the Code and those provisions are exhaustive in nature. Whereas Sections 22, 24 and 25 deal with power of transfer, Section 23 merely provides forum and specifies the court in which an application for transfer may be made. Section 23 is not a substantive provision vesting power in a particular court to order transfer.

47 In our considered opinion, where several courts having jurisdiction are subordinate to one appellate court, an application for transfer may be made to such appellate court and the court may transfer a case from one court subordinate to it to another court subordinate to it. Likewise, where such courts are subordinate to the same High Court, an

application may be made and action may be taken by the High Court transferring a case from one court subordinate to it to any other subordinate court to that High Court. But where such courts are subordinate to different High Courts, it is only the Supreme Court (this Court) which may pass an order of transfer. In other words, if two courts are subordinate to different High Courts, one High Court has no power, jurisdiction or authority to transfer a case pending in any court subordinate to that High Court to a court subordinate to other High Court. It is only the Supreme Court (this Court) which may order the transfer.”

4 On perusal of the aforesaid observations, it is clear that the Hon’ble Apex Court has made it clear that one High Court can transfer the matter to other Court when both such Courts are subordinate to it only. The High Court cannot transfer any matter from a Court subordinate to it to the Court subordinate to other High Court.

5 In view of such position, learned Counsel for the applicant seeks leave to withdraw the Misc. Civil Application with liberty to approach before the Hon’ble Supreme Court, if the applicant decides to move a transfer application in respect of the proceeding, which is subject matter of this Application.

6 As such, Misc. Civil Application is disposed of as
withdrawn with the liberty as aforesaid.

(SANDIPKUMAR C. MORE)
JUDGE

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