

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

MISC. CIVIL APPLICATION NO.166 OF 2018

**SONALI GAURAV MAHAKUNDE ALIAS SONALI KAILAS AAGLAVE
VERSUS
GAURAV ISHWAR MAHAKUNDE**

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Advocate for Applicant : Mr. Madan S. Kokate
Advocate for Respondent : Mr. Rajendra B. Dhakane

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CORAM : SMT. BHARATI DANGRE, J.

DATE : 24th JANUARY, 2022

PER COURT :

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

By the application filed under Section 24 of the Code of Civil Procedure the applicant wife is seeking transfer of HMP No.113/2018 filed by the respondent husband in the Court of learned Civil Judge, Senior Division, Panvel, Dist. Raigad, to the Family Court, Jalna, where the wife herself has instituted proceedings under Domestic Violence Act in the form of PWDVA No.51/2018 and Cri.M.A. No.368/2018 claiming maintenance.

2. The marriage between the parties came to be solemnised in December, 2016 and since the relationship could not flourish, without referring to the reasons and allegations made in the application, suffice

it to note that, the respondent husband filed proceedings in the year 2018 before the Court of learned Civil Judge, Senior Division, Panvel, seeking dissolution of marriage. The applicant wife also has filed proceedings at the place where she is residing i.e. in her parental house, at Jalna.

The plea of the applicant is to the effect that, she is pursuing her education in the College at Aurangabad, whereas the counsel for the respondent by filing the additional affidavit sworn on 24-01-2022, which is taken on record, has deposed that on completing her education the applicant has secured a job in R.P. International English School at Badnapur and earning a good salary. The counsel for the applicant, however, deny that she is getting any salary and therefore, she continue with her plea to transfer the proceedings on account of not having any source of earning to her and also on the ground that for attending the proceedings at Panvel she will have to undertake a journey of approximately 450 Km. one way and as a lonely lady it would be difficult for her to undertake this journey.

3. The difficulty expressed by the applicant is well appreciated, however, considering the principle of dominus litis, if the husband has chosen to institute proceedings at Panvel, where he is legally entitled to institute the same, the convenience of wife by itself

cannot be a ground. However, since the convenience of both the parties is pressed into service, the interest of both the parties lie in expeditious disposal of proceedings filed by them individually, this can only be done by transferring the proceedings filed by the husband at Panvel to the Family Court at Jalna and requesting the Family Court, Jalna to assign the proceedings preferably to the same Judge who shall be requested to determine the proceedings within a period of one year, so that interest of justice can be served better for both the parties.

It is the settled position of law that the power of the Magistrate under the Domestic Violence Act can also be exercised by the Family Court and therefore, proceedings of maintenance and domestic violence filed by the wife, can be made over to the Family Court, Jalna and with the HMP No.113/2018 being transferred from the learned C.J.S.D., Panvel, to the Family Court, Jalna, the proceedings can be clubbed together so as to avoid any distinct and conflicting orders being passed. With the cooperation of respective parties, the learned Judge, Family Court at Jalna is requested to dispose off all the three proceedings within a period of one year from today and the request be also transmitted to the learned Judge, Family Court, not to compel the attendance of the respondent husband on each and every date of hearing and if possible on the date of examination or cross examination,

if the mode of video conferencing can be availed for, even the presence of respondent for the stages of examination or cross examination can be dispensed of.

This is the only way by which the justice can be ensured to both the parties and inconvenience to each of them can be minimised.

4. In the wake of the above, the present Misc. Civil Application is allowed in terms of prayer clause ‘(B)’, which reads thus:-

“(B) The divorce proceedings filed by present respondent pending before Id. Civil Judge Senior Division, Panvel bearing HMP No.113/2018 may kindly be transferred to Competent Court at C.J.S.D., Jalna wherein the maintenance proceeding Cri.M.A. No.368/2018 and domestic violence proceeding PWDVA No.51/2018 are pending between the same parties.”

Upon the Misc. Civil Application being allowed, the learned C.J.S.D., Panvel, shall forthwith transmit the record and proceedings of HMP No.113/2018 to the Family Court at Jalna. Similarly, the PWDVA No.51/2018 pending before the Magistrate at Jalna, shall also stands transferred to the Family Court at Jalna and be tagged along with Cri.M.A. No.368/2018 filed by the applicant wife, which is already made over at Family Court, Jalna.

(SMT. BHARATI DANGRE, J.)