

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

CRIMINAL APPLICATION NO.2707 OF 2021

Vilas S/o Kashinath Koli

...APPLICANT

VERSUS

Miss. Surekha @ Samrudhi
W/o Vilas Koli

...RESPONDENT

...
Mr.Hemant Surve Advocate with Kshitij H. Surve Advocate
for Applicant.
None present for Respondent though served.
...

CORAM: SMT. VIBHA KANKANWADI, J.

DATE OF RESERVING ORDER : 3rd FEBRUARY 2022

DATE OF PRONOUNCING ORDER : 10th MARCH 2022

ORDER :

1. Present application has been filed under Section 407 and 482 of the Code of Criminal Procedure for transfer of PWDV Application No.12 of 2021, filed by the respondent before the learned Judicial Magistrate, First Class, Biloli, District-

Nanded, for its transfer before the learned Family Court, Aurangabad and to be clubbed with the pending cases.

2. Heard learned Advocate Mr. Hemant Surve and learned Advocate Mr. Kshitij Surve for the applicant. Respondent though served, failed to appear.

3. The applicant and the respondent are husband and wife, in between whom there is marital discord and it has led to filing of various cases. The applicant filed Petition No. A-309 of 2019 under Section 13(1)(i-a) of the Hindu Marriage Act for divorce before the Family Court, Aurangabad. Further, he has also filed Petition No. D-24 of 2019 under Sections 5 and 6 of Guardians and Wards Act for custody of the child, before the Family Court, Aurangabad. Thereafter, it appears that the respondent – wife filed Petition No. E-36 of 2021 under Section 125 of the Code of Criminal Procedure for maintenance to herself and for the son, before the Family Court, Aurangabad. Respondent had also filed Petition No. A-435 of 2021 against the present applicant under Section 9 of the Hindu Marriage Act for restitution of conjugal rights, before the Family Court, Aurangabad. It also appears that respondent had filed Misc. Civil Application No.214 of 2019 before this Court for transfer of Petition No. A-309 of 2019 and

Petition No. D-24 of 2019 to the Court of the learned Civil Judge, Senior Division, Biloli. That Application came to be disposed of by this Court on 27th January 2020 when the learned Advocate for the respondent sought withdrawal of the said Application with liberty to file appropriate application before the Family Court, Aurangabad seeking direction for the travel and other expenses for her. With that liberty the said Application was withdrawn and it appears that thereafter she had filed application in Petition No. A-309 of 2019 before the Family Court, Aurangabad, for grant of travel expenses. Accordingly, the learned Judge, Family Court, Aurangabad allowed her application on 5th November 2020 and it was directed that she should be paid an amount of Rs.1795/- per date for travelling expenses and also Rs.10,000/- towards initial Advocate's fees. It appears that visitation order was also passed by the learned Judge, Family Court, Aurangabad so that father can meet son.

4. Thereafter, it appears that respondent – wife has filed PWDV Application No.12 of 2021 before the learned Judicial Magistrate, First Class, Biloli. No doubt on earlier occasions also respondent has given her address of Biloli but then Petition under Section 125 of the Code of Criminal Procedure was filed by her before the Family Court, Aurangabad. In order to avoid

conflicting decisions, it would be then necessary to club that application also before the Family Court, Aurangabad.

5. The respondent – wife has not resisted this Application, which can be inferred as consent. However, her interest is also required to be protected when there is addition of a Petition. Therefore, with certain directions, the Application deserves to be allowed. Accordingly following order is passed:-

ORDER

- i) Application stands allowed.
- ii) PWDV Application No.12 of 2021 pending on the Files of learned Judicial Magistrate, First Class, Biloli, District-Nanded stands transferred to the Files of learned Judge, Family Court, Aurangabad and to be tagged and tried along with Petition No. A-309 of 2019, Petition No. D-24 of 2019, Petition No. E-36 of 2021 and Petition No. A-435 of 2021.
- iii) Learned Judge, Family Court, Aurangabad to consider, on the application filed by the respondent – wife, for enhancement in the travel expenses (taking note of the increase in fare) and

also for increase in the Advocate's Fees, in view of addition of one more petition.

iv) Registrar Judicial to inform the learned Judicial Magistrate, First Class, Biloli, District-Nanded and also to the learned Judge, Family Court, Aurangabad, immediately, by sending copy of this order through E-Mail.

[SMT. VIBHA KANKANWADI , J.]

asb/MAR22