

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

MISC. CIVIL APPLICATION NO. 244 OF 2018

Sow. Leelabai w/o Prakash Gavande Applicant

Versus

Prakash s/o Nathuji Gavande Respondent

Mr. S. R. Andhale, advocate for the Applicant
Mr. B. R. Kedar, advocate for the Respondent.

CORAM : SANDIPKUMAR C. MORE, J.

DATE : 25th November, 2022.

PC :

1 Heard rival submissions.

2 The applicant-wife is seeking transfer HMP No. 44 of 2018, filed by the respondent-husband for getting divorce, from the Court of learned Civil Judge, Senior Division, Daryapur, District Amravati, to the Family Court at Aurangabad.

3 The learned Counsel for the applicant-wife submits that the applicant is not having any independent source of income. Further, though the concerned Court at Daryapur had granted maintenance to the applicant at the

rate of Rs.100/- per month long back, but the respondent has not paid arrears of the same till today. According to him, the applicant has started residing at Aurangabad and she is also having address of Aurangabad.

4 On the contrary, learned Counsel for the respondent-husband has strongly opposed the application by relying on the reply filed by the respondent. The learned Counsel for the respondent submits that the applicant is being maintained by their four sons and the applicant had in fact resided in Daryapur taluka where her one of the sons is still residing. He pointed out that the earlier Aadhar card was of the address of Chandikapur, Daryapur taluka and as such, if the proceedings from Daryapur are transferred to Aurangabad, then the respondent, would be having no choice but to leave the remedy of getting divorce under the said petition. He submits that the respondent is ready to pay the necessary expenses for travelling of applicant-wife from Aurangabad to Daryapur.

5 Admittedly, this appears to be unique situation where the ages of wife and husband are 65 and 69, respectively. Further, it would be inconvenient for both to travel the distance of around 400 Kms if the matter under transfer is allowed to be retained at Daryapur or transferred to Aurangabad. It is extremely important to note that one of the sons of rival parties is residing at Chandikapur, Daryapur taluka and, therefore, if the proceeding, which is sought to be transferred, is allowed to be retained at Daryapur only, then the applicant-wife has definitely an alternative to stay with her son at Chandikapur and to attend the dates of proceeding at Daryapur therefrom. Needless to say, such arrangement can be done only if respondent provides certain amount to the applicant-wife per date.

6 The learned Counsel for the respondent voluntarily made a statement that the respondent is ready to pay amount of Rs.5000/- (Rs. Five Thousand) per date to the applicant-wife if she attends the dates of the proceedings at Daryapur. It seems to be a good offer for the applicant-wife

because considering the age of respondent, he would have to leave his legal remedy in case the proceeding is transferred to Aurangabad. Though it is consistently observed by this Court and the Hon'ble Apex Court in so many judgments that the convenience of the wife is to be seen first, however, in the peculiar circumstances of this case, contrary view can be taken especially when the respondent-husband is ready to bear the expenses, as mentioned above and by also keeping in mind that the applicant-wife can very well stay with her son at Chandikapur, Taluka Daryapur, for attending the dates of the proceedings at Daryapur.

7 In view of the same, following order is passed:

- (i) Misc. Civil Application is hereby rejected.
- (ii) However, it is made clear that Respondent-husband shall pay amount of Rs.5000/- (Rs. Five Thousand) per date to the applicant-wife well in advance if she has to attend the dates of HMP No. 44 of 2018 in the Court of Civil Judge, Senior Division, Daryapur, District Amravati.

(SANDIPKUMAR C. MORE)
JUDGE

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