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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO. 465 OF 2022

Sau. Deepali Mahesh Gaikwad

.. Applicant

Versus

Mahesh Bajirao Gaikwad

.. Respondent

-
- Mr. Vaibhav R. Gaikwad, Advocate for Applicant.
 - None for Respondent.
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CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 02, 2022

P.C.:

1. Heard Mr. Gaikwad, learned Advocate appearing for Applicant.

2. Though served, none appears for the Respondent. Perused the Application. Affidavit of service dated 02.12.2022 has been filed and is taken on record. The Affidavit of service indicates that Respondent has been served with the copy of the Application and order dated 25.11.2022 which has been delivered successfully to him on 26.11.2022.

3. Parties got married on 08.01.2020. Respondent – husband initiated proceedings for dissolution of marriage / divorce pending on the file of Civil Judge Senior Division, Panvel of which transfer is sought by Applicant to Family Court, Satara, where she resides with her parents and daughters. DV Act proceeding filed by wife is pending

at Satara. Applicant is unemployed.

4. Perused grounds of hardship which are pressed in paragraph Nos.6/b, c, f and g of the Application. There is one minor daughters aged 2 years who is in the custody and care of Applicant. As Applicant – wife will be required to travel from Satara to Panvel to attend the proceedings, it will cause prejudice and hardship to her.

5. It is well settled by a catena of judgments of the Supreme Court as well as this Court that the primary concern in such matters is the convenience of the wife.

6. The cardinal principle for exercise of power under Section 24 of CPC is that the ends of justice demand the transfer of the suit, appeal or other proceeding. In matrimonial matters, wherever the Courts are called upon to consider the plea of transfer, the Courts have to take into consideration the economic soundness of either of the parties, the social strata of the spouses and behavioural pattern, their standard of life antecedent to marriage and subsequent thereto and circumstances of either of the parties in eking out their livelihood and under whose protective umbrella they are seeking their sustenance to life. Generally, it is the wife's convenience which must be looked at by the Courts, while deciding a transfer application and merits of the case need to be considered.

7. In the present case if the Applicant - wife is forced to go from Satara to Panvel, it would amount to denial of justice to her. It is settled principal of law that justice is not only to be done but it should also appear to have been done. Hence, to strike a balance between the parties with a view to do complete and substantial justice and proceeding on a holistic view of the matter, I am of the considered view that it would be just and expedient to transfer the proceeding filed by Respondent-Husband from Panvel to Satara.

8. Since the contentions are not controverted, in my opinion, ground of hardship has to be considered in favour of the Applicant, as one way distance between Panvel and Satara is 225 kilometers.

9. As such, Application is allowed and disposed of in terms of prayer clause (a) which reads as under:-

“(a) To transfer the proceeding bearing Petition No.443 of 2022 pending before the Ld. Civil Judge Senior Division Panvel to Family Court, Satara.”

[MILIND N. JADHAV, J.]