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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO. 125 OF 2022

MRS. ALPA VIREN PANCHAL

....APPLICANT

V/s.

MR. VIREN ASHOK PANCHAL

....RESPONDENT

Ms. Trupti Chavan i/b Pradip S. Chavan Advocate for the Applicant
Mr. Shailendra S. Kanetkar a/w Mr. Nikhil Dongre for Respondent

CORAM : NITIN W. SAMBRE, J.

DATE: APRIL 19, 2022.

P.C.:

1) After parties got married on 25/03/2016 at Mumbai, they were blessed with a daughter who is aged about two years. Applicant-wife is a custodian of a child.

2) Respondent-Husband initiated proceedings under Section 9 of the Hindu Marriage Act for restitution of conjugal rights of which transfer is sought to Family Court at Bandra on the ground of hardship. It is brought to my notice that during the pendency of present Application Applicant-wife has also initiated composite

proceedings under Protection of Women from Domestic Violence Act and also under Section 13 of the Hindu Marriage Act for divorce.

3) In the aforesaid background, it is claimed that, to avoid recording of overlapping findings between the parties on the same set of facts and to avoid hardship to the Applicant, she being a custodian of a minor child, transfer be ordered.

4) Prayer is strenuously opposed by learned counsel Mr. Kanitkar on the ground that Applicant can attend the proceedings virtually. Apart from above, he would claim that non-applicant is willing to bear travel and out of pocket expenses, if so required. He would further urge that proceedings for divorce are initiated by way of afterthought and as such, prayer for transfer is liable to be rejected.

5) The fact that Applicant is custodian of a minor daughter aged about two years is not in dispute. Marriage inter-se between parties had taken place in the jurisdiction of Bombay Court i.e. Mumbai. In the aforesaid background, issue of hardship has to be weighed in favour of the Applicant, particularly when non-Applicant is residing out of the country and attending the proceedings.

6) In the aforesaid background and having regard to judicial

discipline viz. to avoid overlapping findings being recorded, prayer for transfer of proceedings stands allowed in terms of prayer clause (A) which reads thus:

“(A) That the present Miscellaneous Civil Application may be allowed and this Hon’ble Court U/s. 24 of Civil Procedure Code that by passing appropriate order transfer the Petition No. A-2589 of 2021 pending before the Family Court at Pune to the Family Court at Bandra, Mumbai.”

7) Needless to clarify that counsel for the non-Applicant is already served with copy of Application preferred by the Applicant under Section 13 (1) (ia) of Hindu Marriage Act.

[NITIN W. SAMBRE, J.]