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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
MISC. CIVIL APPLICATION NO. 95 OF 2020**

Mr. Deepak Sadashiv Nevrekar Applicant.

V/s

Mrs. Ashwini Deepak Nevrekar Respondent.

Mr. Umesh Yerunkar for the Applicant.

Mr. Rahul R. Shelke for the Respondent (VP not filed)

CORAM: NITIN W. SAMBRE, J.

DATE: APRIL 11, 2022

P.C.:-

1] Out of matrimonial discord, at the behest of the Applicant/husband proceedings being Marriage Petition No.A1186/2019 is initiated for dissolution of marriage under Section 13 of the Hindu Marriage Act, which is claimed to be pending on the file of Family Court, Bandra, Mumbai. I am informed that said proceedings have reached at the stage of recording of evidence. Non-applicant wife has initiated D.V. Act proceedings being D.V. No.169 of 2019 which has resulted in passing of order dated 29/1/2022 below Exhibit-5. Said D.V. Act proceedings are pending on the file of Judicial Magistrate, First Class, 2nd Court, Thane wherein amount of

Rs 5,000/- is ordered to be paid by the Applicant/husband towards maintenance of daughter with effect from 07/05/2019.

2] Though aforesaid order is holding the field since last about three months, rightly so pointed out, the said order is not complied with in its entirety as the Applicant has not deposited amount of maintenance as was directed.

3] Applicant/husband sought transfer of Hindu Marriage Act proceedings being Marriage Petition No.A228/2019 pending on the file of Family Court, Thane to the 7th Family Court, Bandra, Mumbai on the ground that said proceedings are initiated by non-applicant/wife subsequent in point of time for very same relief i.e. dissolution of marriage/divorce under Section 13. It is brought to my notice that said proceedings filed by the Applicant are at initial stage as counseling is going on. In the backdrop of pendency of proceedings initiated by the Applicant being Marriage Petition No.1186/2019 on the file of Family Court, Bandra, Mumbai, Applicant has sought transfer of aforesaid proceedings initiated by non-applicant/wife on

the ground that on similar set of facts and evidence, there is likelihood of recording of overlapping findings.

4] While countering the said submissions, Counsel for non-applicant wife submitted that proceedings initiated by the Applicant husband needs to be transferred to Family Court, Thane to be tried together with the proceedings initiated by her being proceedings No.A228/2019 pending on the file of Family Court, Thane. One more contention is, D.V. Act proceedings initiated by the non-applicant/wife are already attended by the Applicant/husband at Thane. That being so, submission is made that proceedings initiated by Applicant/husband be directed to be transferred to the Family Court, Thane.

5] I have appreciated rival submissions.

6] As observed hereinabove, Applicant/husband has failed to honour the order of payment of maintenance till this date i.e. for last more than two and half months as he was directed to pay maintenance of Rs 5000/- per month from 07/05/2019 to his

daughter. Apart from above, fact remains that non-applicant/wife is a working lady and custodian of a minor daughter.

7] In the aforesaid backdrop, though the Applicant was justified in claiming transfer for avoiding recording of overlapping findings, such prayer of transfer has to be viewed and considered to the benefit of the non-applicant/wife considering her condition viz. not getting maintenance from the Applicant for her daughter, she is already serving in private firm and being custodian of a minor daughter.

8] That being so, prayer of the Applicant seeking transfer stands rejected. Prayer for transfer moved by the non-applicant/wife of the Proceedings being Marriage Petition No.A1186/2019 pending on the file of Family Court, Bandra, Mumbai to the Family Court, Thane stands allowed.

9] As such, it is directed that Marriage Petition No.1186 of 2019 initiated by the Applicant and pending before the Family Court, Bandra, Mumbai is ordered to be transferred to the Family Court,

Thane and to be heard with Marriage Petition No.A228/2019 pending on the file of Family Court, Thane initiated by the non-applicant/wife.

10] Application stands disposed of in the aforesaid terms.

11] Considering the fact that proceedings for divorce initiated by the Applicant/husband has reached at an advance stage, the Family Court, Thane is requested to decide the proceedings expeditiously.

(NITIN W. SAMBRE, J.)