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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

MISC. CIVIL APPLICATION NO.284 OF 2022

Rahul Uttam Phadtare ... Applicant
V/s.
Sarika Rahul Phadtare ... Respondent

**WITH
MISC. CIVIL APPLICATION NO.191 OF 2022**

Sarika Rahul Phadtare ... Applicant.
V/s
Rahul Uttam Phadtare ... Respondent

Ms. Seema Sarnaik i/b Ms. Sangeeta Salvi for the Applicant in MCA No.284/2022 & for the Respondent in MCA No.191/2022.
Mr. Akshay Kapadia for the Respondent in MCA No.284/2022 & for the Applicant in MCA No.191/2022.

**CORAM : S. M. MODAK, J.
DATED : 17TH AUGUST 2022.**

P.C:-

1. Heard learned Advocate for the Applicant-wife in Miscellaneous Application No.191 of 2022 and learned Advocate for the applicant-husband in Miscellaneous Civil Application 284 of 2022.
2. These are two transfer Applications. Misc. Civil Application No.191 of 2022 is filed by the wife for transfer of Restitution Petition filed by the husband before the Family Court, Pune and she wants transfer of the same to the Court of Civil Judge, Senior Division, Thane. Before the Thane Court her Petition for divorce is pending. Whereas the husband is praying for transfer of Divorce Petition filed by the wife to the Family Court at Pune wherein his Restitution

Petition is pending.

3. Both spouses have not filed replies to transfer Application filed by each of them. They submitted that averments in their respective applications is sufficient. So by consent both these Applications are heard on the basis of averments made in their individual Applications.

4. After hearing both learned Advocates, one thing is clear and that is both the Petitions needs to be tried together by one and the same Court. The reason is if both the petitions are tried by separate Court, there may be possibility of conflicting orders and it may lead to problems in execution. It is also for the reason that it will be in best interest of the parties considering the witnesses to be examined by both of them in each of these Petitions. So in view of the above, question is whether the Thane Court is the appropriate forum or whether it is Pune Court which is the appropriate forum ?

5. Learned Advocate for husband invited my attention to the provision of section 21A of the Hindu Marriage Act. She has also read that provision. It contemplates transfer of Petitions consisting various reliefs mentioned therein. So far as present two Petitions are concerned, one of relief sought in one Petition is for divorce. Whereas the husband is seeking for restitution. Admittedly, the prayer in restitution is not mentioned under provision of section 21A of Hindu Marriage Act. So both these Petitions needs to be decided as per section 24 of the Code of Civil Procedure.

6. In support of the prayer for transfer, learned Advocate for the wife invited my attention to various grounds mentioned in para No.28 of her Transfer Petition. It consists of her financial condition, atrocities alleged to be committed on her by the husband, danger to her life. Whereas all these allegations are denied by the husband through his

Advocate by way of arguments.

7. Whereas the learned Advocate for the husband invited my attention to averments in para no.5 and various sub-clauses of para 5. It is submitted that two children born out of said wedlock are residing at present with their father. Both are school going children. They are being taken care by mother, Kaki (aunt) and cousin sister of the husband. There is also emphasis on distance in between Pune to Thane. The husband has also shown readiness to reimburse travelling expenses to the wife. It is also emphasized that the wife is also required to travel from Navi Mumbai to Thane for attending the Court at Pune. There is also emphasis that after both spouses started residing separately from 25th July 2021. Initially, wife stayed at her husband's house at Satara and now she claims that she is residing at Kopar Khairane, Navi Mumbai. It is also submitted that the wife claims that she is unemployed and being housewife it is not convenient for her to attend the Family Court at Pune ??????????. The order dated 20th April 2022 passed by this Court in Misc.Civil Application No.79 of 2022 is relied upon on behalf of the husband. In that matter this Court was pleased to reject transfer request made by the wife and on the other hand directed the husband to pay certain sum of money towards travelling allowance.

8. By way of reply, it is submitted that the observation in that order are factual observations. It is submitted that the Application for grant of interim alimony filed by wife and also custody Petitions are pending before the Thane Court.

It is true that the allegations and counter allegations made by both spouses against each other cannot be looked into by this Court for deciding this Transfer Application except for limited purpose. If

wife comes with a grievance that during cohabitation she was being ill-treated to great extent and on that background if there is danger to her life to visit the place where husband is residing certainly it can be considered as a ground for transfer. In this case, to certain extent, this ground is taken by the Applicant-wife. At the same time it is true that she is not coming with the case that she has approached any authority so far as danger to her life is concerned.

9. When this Court has considered the grounds for transfer taken by both spouses, after balancing them this Court feels that the Petition for restitution filed by the husband at Pune needs to be transferred to the Court of Civil Judge, Senior Division, Thane. It may be true that the husband has shown his bonafides to pay traveling cost. It may be true that at present he is having custody of both children and certainly being father he is required to look after them. At the same time he has said that his mother, aunt and his sister, are taking care. It may be true that the husband is undertaking the painting contract and as such he is required to devote some time towards that.

10. Even though this reason may be of some importance, the fact that the Applicant in Miscellaneous Civil Application No.171 of 2022 is a lady, her inconvenience needs to be given more priority because the law considers woman as class belonging to weaker section of society and needs more protection. Except grounds taken by the husband as stated above, there are no other special grounds to say that the Applicant-wife is having more financial means to take her care and also having all means of transport at her disposal to attend the Pune Court, the request by the husband cannot be accepted. Hence this Court is inclined to allow Transfer Application by wife and inclined to reject the Transfer Application of the husband. The

observations made by this Court in above referred order are factual observations. Hence it is not useful to husband. In view of that the following order is passed :

O R D E R

- (i) Transfer Application No.284 of 2022 filed by the Applicant-husband is rejected.
- (ii) Transfer Application No.191 of 2022 filed by the Applicant-wife is allowed.
- (iii) The proceedings being Petition No.A.2202 of 2021 pending before the Family Court, Pune is transferred to the Court of Civil Judge, Senior Division at Thane for inquiry and disposal as per law.
- (iv) It is submitted that the Petition at Thane is fixed on 17th September 2022 and in view of that the Applicant-husband is directed to attend the Court at Thane on 17th September 2022 without any further notice.
- (v) The Civil Judge, Senior Division, Thane is directed to try both the proceedings together and dispose it as per law.

10. At this stage learned Advocate for the Applicant-husband prays for stay for a period of six weeks. It is opposed on behalf of learned Advocate for the wife. The stay is granted for a period of six weeks to the present order.

11. Till that time the parties are at liberty to mutually decide about interim relief by interacting with each other through respective counsel or other marriage counsellors.

(S. M. MODAK, J.)