

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

MISC. CIVIL APPLICATION NO.133 OF 2021

Aruna Satish Dhoke nee name

Aruna Gangaram Pote

..Applicant

Versus

Satish Manikrao Dhoke

..Respondent

Mr. Sharad T. Bhosale, for the Applicant.

Mr. S. H. Kankal, for the Respondent.

CORAM : NITIN W. SAMBRE, J.

DATE : 17th FEBRUARY, 2022

PC.

1. On 9th November, 2012 both the parties got married and out of said wedlock, they blessed with a daughter. The non-applicant/ husband is admittedly custodian of the said daughter.

2. Parties are serving with the State Government and the applicant initiated proceeding being No.124 of 2021 before the Court of Civil Judge Senior Division, Vita under Section 13(i)(i-a) under the Hindu Marriage Act for grant of divorce.

3. The non-applicant initiated proceeding under Section 9 of the Hindu Marriage Act for restitution of conjugal rights which is pending on the file of Family Court, Aurangabad.

4. Alleging hardship, applicant/wife has sought transfer of the Hindu Marriage Petition initiated under Section 9 by the non-applicant/husband to the Court at Vita, as according to her, it is difficult for her to travel from Vita to Aurangabad to attend the said

proceeding. To avoid multiplicity in recording evidence and contradictory findings on the same fact, it is claimed that the order of transfer be passed.

5. Mr. S. H. Kankal, learned counsel appearing for the non-applicant/husband opposed the prayer.

6. It appears from record that the present applicant initially agreed for divorce by mutual consent however insisted this Court to first pass an order of transfer of Hindu Marriage Petition. As far as the aforesaid contentions are concerned, in my opinion, once the applicant consents for grant of divorce by mutual consent, proceedings for restitution of conjugal rights will automatically come to an end. Apart from above, fact remains that the applicant at this stage has backed out from extending consent for divorce and has insisted for transfer of the proceedings. While considering such prayer, this Court is equally required to sensitive to the fact that the proceedings for restitution of conjugal rights are initiated by the non-applicant/husband who is custodian of the minor daughter. Both the parties are serving with the State Government. As such, issue of hardship cannot be considered in favour of applicant/wife.

7. In the aforesaid background and considering the conduct of the applicant, in my opinion, no case of hardship will be considered in favour of the applicant.

8. That being so, application stands rejected.

[NITIN W. SAMBRE, J.]