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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO. 450 OF 2022

Mrs. Siddhi Chinmay Pradhan

.. Applicant

Versus

Mr. Chinmay Rajendra Pradhan

.. Respondent

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- Mr. Sujay N. Gawade a/w. Ms. Mudita Pawar i/by M/s. Shree & Co. for Applicant.
- Mr. Pradeep P. Kumawat i/by Mr. Prabhanjay Dave, Advocate for Respondent.

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CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 02, 2022

P.C.:

1. Heard Mr. Gawade, learned Advocate appearing for Applicant and Mr. Kumawat, learned Advocate appearing for Respondent at length. Perused the Application. This is an Application filed under Section 24 of the Code of Civil Procedure, 1908 by the Applicant – wife.

2. Parties got married on 31.01.2016. Applicant seeks transfer of matrimonial proceeding of marriage ‘D’ Petition No.5 of 2022 pending before the Family Court No.3, Nagpur filed by Respondent under Section 25 of the Guardians and Wards Act, 1890 read with Section 7(1)(G) of the Family Courts Act, 1984. Applicant resides in Thane with her parents and 5 year old son.

3. Mr. Gawade submitted that both Applicant and Respondent are deaf and communicate with each other with the help of hearing aids. It is seen that parties have a 5 year old son who is in the care

and custody of Applicant. Applicant has filed Petition for maintenance under Section 125 of the Code of Criminal Procedure before Family Court at Thane. The son's school expenses are borne by Applicant's parents. Mr. Kumawat submitted that Respondent needs to take advice from his father and file Reply for opposing the Application.

4. In the above facts, the present Application cannot be kept pending for want of reply Affidavit and deserves to be granted immediately. I have heard Mr. Kumawat and noted his objections.

5. Perused grounds of hardship which are pressed in paragraph Nos.35/ I, II, III, IV, V, VI and VII of the Application. As Applicant – wife will be required to travel from Thane to Family Court, Nagpur to attend the custody proceedings, it will certainly cause prejudice and hardship to her.

6. 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.

7. 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.

8. In the present case if the Applicant - wife is forced to go from Thane to Nagpur, 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 Nagpur to Thane.

9. 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 Thane and Nagpur is around 820 kilometers.

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

“(A) This Hon’ble Court be pleased to issue appropriate direction or Order to transfer the Matrimonial proceedings of Marriage Petition No.D-5 of 2022 from the learned Family Court No.3, Nagpur, to the learned Family Court, Thane.”

[MILIND N. JADHAV, J.]