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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO. 457 OF 2022

Ashwini Omkar Dhane
@ Ashwini Prakash Nikam

.. Applicant

Versus

Omkar Dilip Dhane
Through Power of Attorney
Dilip Ganpati Dhane and Anr.

.. Respondent

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- Mr. Nikhil Wadikar a/w. Faiza Shaikh and Malhar Pawar, Advocates for Applicant.
 - Mr. Manoj Kondekar a/w. Mr. Avinash Gaikwad, Advocates for Respondent.
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CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 02, 2022

P.C.:

1. Heard Mr. Wadikar, learned Advocate appearing for Applicant and Mr. Kondekar, 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 03.09.2019. Respondent – husband initiated proceedings for dissolution of marriage / divorce pending on the file of Family Court, Pune of which transfer is sought by Applicant to Family Court, Satara, where she resides with her parents. Applicant is not employed. Restitution proceedings and maintenance proceedings filed by Applicant – wife are pending in Satara.

3. Perused grounds of hardship which are pressed in paragraph Nos.10/ A and B of the Application. As Applicant – wife will be required to travel from Satara to Pune to attend the proceedings, it will cause prejudice and hardship to her.

4. 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.

5. Mr. Kondekar fairly submitted that Respondent is at present employed in France. That he would be willing to pay the cost incurred to Applicant for attending the Court hearing at Pune.

6. 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.

7. In the present case if the Applicant - wife is forced to go from Satara to Pune, 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 Pune to Satara.

8. 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 Satara and Pune is 110 kilometers.

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

“(A) This Hon’ble Court may be pleased to pass an order to transfer M.P. No. A-1363/2022 from the Family Court, Pune to the Family Court, Satara and be pleased to direct the Family court, Satara to hear and dispose of the said transferred petition along with M.P. No. A-02/2022 and Cri. M.A. No. 01/2022 both pending before the Family Court, Satara as per law.”

[MILIND N. JADHAV, J.]

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