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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO. 453 OF 2022

Poonam Premjit Kalage
@ Poonam Gajanan Kamble

.. Applicant

Versus

Premjit Rajaram Kalage

.. Respondent

-
- Ms. Rekha Musale, Advocate for the Applicant.
 - None for Respondent.
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CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 02, 2022

P.C.:

1. Heard Ms. Musale, learned Advocate appearing for Applicant.

2. Though served, none appears for the Respondent. Perused the Application. This is an Application filed under Section 24 of the Code of Civil Procedure, 1908 by the Applicant – wife. Affidavit of service dated 30.11.2022 is taken on record. Record indicates that Respondent is served.

3. Parties got married on 19.06.2019. Respondent – husband initiated proceedings for restitution of conjugal rights pending on the file of Civil Judge Senior Division, Jaysingpur, Dist. Kolhapur of which transfer is sought by Applicant to Family Court, Thane, where she resides with her parents and one son (2 years). Applicant has also

filed Petition under Section 125 of the Code of Criminal Procedure at Thane.

4. Perused grounds of hardship which are pressed in paragraph Nos.4/D, E and F of the Application. There is one minor child aged 2 years who is in the custody and care of Applicant. As Applicant – wife will be required to travel from Thane to Kolhapur to attend the proceedings, it will cause prejudice and hardship to her.

5. 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.

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 Thane to Kolhapur, 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 Kolhapur to Thane.

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 Thane and Kolhapur is 388 kilometers.

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

“(b) Be pleased to transfer the Papers and proceedings of the Marriage Petition No.125 of 2022 pending before the learned Civil Judge Senior Division, Jaysingpur, be directed to be transferred to Hon’ble Family Court, Thane and tried accordingly alongwith Petition E-45 of 2022.”

[MILIND N. JADHAV, J.]

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