

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

MISC. CIVIL APPLICATION NO. 24 OF 2020

Pooja w/o Dinesh Kamble,
age: 23 years, Occ: Household,
R/o C/o Uttamprakash s/o
Baburao Khandare,
71, Teachers Housing Society,
Moulali Chowk, Dakshin Sadar
Bazar, Solapur, District Solapur.

Applicant

Versus

Dinesh s/o Khanderao Kamble,
age: 31 years, Occ: Service,
R/o Khushalsingh Nagar, Nanded,
Tq. & District Nanded.

Respondent

Mr. Kalyan S. Shinde, advocate for the Applicant
Mr. D. M. Shinde, advocate for the Respondent.

CORAM : SANDIPKUMAR C. MORE, J.

DATE : 10th February, 2023.

Oral Judgement:

1 The applicant is seeking transfer of Petition No.A-205 of 2019, filed by the Respondent-husband for getting divorce, from the Court of learned Principal Judge, Family Court at Nanded to the Family Court at Solapur.

2 According to the applicant, she is having no independent source of income and she is also having a son of 5 years of age with her. Further, the distance between Nanded to Solapur is around 275 Kms and, therefore, it is highly difficult for her to travel to attend the dates at Nanded. According to her, the Respondent-husband is serving as Major in the Army and earning handsome salary. having sufficient means and, therefore, even on transfer of the matter, he can attend the dates at Solapur since he is not residing at Nanded, but presently posted in North India.

3 On the contrary, the Respondent-husband has strongly opposed the application by filing affidavit-in-reply and contended that he is serving as Major in Indian Army and till date, posted at various locations, namely Shri Ganganagar (Rajasthan), Joshimath (Uttarakhan) and Kolkata (West Bengal). According to him, the applicant willingly deserted him in the month of June-2019. The applicant had also tried to tarnish his image by making false allegations against him. Further, it is contended by him that

father of the applicant is a political leader of Shiv Sena, who served as MLA thrice and even once he was Minister of Government of Maharashtra. As such, there will be threat to his life if he is asked to attend the dates at Solapur. The learned Counsel for the Respondent-husband has also relied upon certain newspaper cuttings wherein it is reflected that the applicant has been appointed as office bearer of “Yuvati Sena” under the Shiv Sena party for the area of Solapur district.

4 The learned Counsel for the Respondent-husband has relied upon following judgments:

(1) **Anindita Das Vs. Srijit Das**, reported in (2006) 9 SCC 197;

(2) **Preeti Sharma Vs. Manjit Sharma**, reported in (2005) 11 SCC 535.

(3) **Deepika Vs. Wing Commander Abhishek Singh Tanwar**, reported in 2022 SCC OnLine Guj 40; and

(4) **Gayatri Mohapatra Vs. Ashit Kumar Panda**, reported in (2003) 11 SC 731.

5 It seems that though it is claimed by the Respondent-husband that the applicant is the active member of *Yuvati* Sena for Solapur district, but it appears that there is no independent source of income to the applicant despite her father being a MLA. Further, she is having a 5 years' son to look after and, therefore, it is difficult for her to travel to Nanded from Solapur without any financial assistance.

6 The learned Counsel for the applicant has also relied upon the judgment of the Hon'ble Apex Court in the case of **Sumita Singh Vs. Kumar Sanjay and another**, reported in AIR 2002 SC 396, wherein it is observed that in the transfer of matrimonial proceedings, it is the convenience of the wife that must be looked into.

7 On the contrary, learned Counsel for the Respondent-husband has placed reliance upon various judgments, as mentioned above. On careful reading of these judgments, it transpires that the sum and substance of these judgments is that the applicant, being a lady, cannot seek

transfer of the proceedings as of right, if it is found that she is able to travel at places. Further, it appears that the Hon'ble Supreme Court, in some of the judgments, has also observed that the husband can always be asked to bear the expenses for travel and stay of the wife if she has to attend dates at the place where the husband has instituted certain proceedings against her.

8 However, there are also other judgments of the Hon'ble Apex Court wherein it has been reiterated that convenience of the wife is to be seen ahead of the convenience of the husband. Further, in one of the judgments, relied upon by the Respondent-husband in the case of **Deepika Vs. Wing Commander Abhishek Singh Tanwar** (*supra*), passed by the Gujarat High Court, it is held that the Court is now required to consider each petition on its own merits. As such, findings in the judgments relied upon by the Respondent-husband cannot be made applicable since the same differ from this case on facts.

9 Learned Counsel for the Respondent-husband has pointed out that the Respondent is now posted in North India and it is convenient for him to travel from Delhi to Nanded for attending the dates, as there is air-connectivity, which is not available between Delhi and Solapur. However, considering convenience of the applicant-wife, especially when she has no independent source of income, it would be rather harsh to ask her to travel from Solapur to Nanded. On the contrary, it would not make any difference for the Respondent-husband to travel from Delhi to Nanded or from Delhi to Solapur.

10 Considering all these aspects, following order is passed:

{A} Misc. Civil Application is hereby allowed.

{B} Petition No.A-205 of 2019 is hereby directed to be transferred to the Family Court at Solapur from the Court of Principal Judge, Family Court at Nanded, for disposal according to law.

{C} The Respondent-husband is directed to appear before the Family Court at Solapur on or before 1st March, 2023.

(SANDIPKUMAR C. MORE)
JUDGE

Later on:

11 After pronouncement of this judgment, learned Counsel for the Respondent-husband seeks stay of this order since the Respondent wants to assail the same before the superior Court. This order is passed on merits after hearing learned Counsel for both the parties. Therefore, only considering the fact that the Respondent wants to challenge this order, effect of this order is stayed for the period of four weeks from today.

(SANDIPKUMAR C. MORE)
JUDGE

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