

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

MISCELLANEOUS CIVIL APPLICATION NO.44 OF 2019

Savita w/o Sharad Sontakke	Applicant
Versus	
Sharad Mahadev Sontakke	Respondent

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Mr. P.P. More, Advocate for the applicant.
Mrs. Rashmi Kulkarni, Advocate for respondent.

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CORAM : SANDIPKUMAR C. MORE, J.

DATED : 19.01.2023.

ORDER :

1. The applicant – wife is seeking transfer of Petition No.A-187/2015 filed by the respondent – husband for getting divorce, from the Family Court, Akola to the Court of Civil Judge (Senior Division) at Ambejogai, District Beed.

2. According to the applicant, she does not have any independent source of income and having one small son to look after. Further, during delivery, she suffered from serious disease and she needs medical attention frequently and therefore, not able to travel long distances. It is contended that the distance between Akola and Ambejogai is more than 300 kms. and therefore, considering the convenience, the application needs to be allowed.

3. On the contrary, respondent – husband strongly opposed the application by filing reply and contended that he is working as an Engineer at Goa, and therefore, it is highly difficult for him to attend the dates, if the matter is transferred to Ambejogai, as claimed by the applicant. The learned Counsel for the respondent also submitted that transfer of the aforesaid petition be done to any third place which would be suitable for both the parties. In the alternative, she submitted that if the transfer is made as per the choice of applicant, then the respondent – husband be allowed to join the proceeding online. She also relied on the various judgments as follows :

- (i) Mrs. Shehal Swapnil Pathak vs Swapnil Arun Pathak (MCA No. 146 of 2019)*
- (ii) Sau. Utkarsha Swaresh Pawar vs Swaresh Vijay Pawar (MCA No. 88 of 2020)*
- (iii) Mrs. Ketaki Prathamesh Salekar vs Prathamesh Ashok Salekar (MCA No. 81 of 2020)*
- (iv) Kalpana Deviprakash Thakar vs Dr. Deviprakash Thakar (1996) 11 SCC 96*
- (v) Shiv Kumari Devendra Ojha vs. Ramajor Shitla Prasad Ojha and others, (1997 (2) SCC 452*
- (vi) Kamudi Aurara vs Surender Pal Singh Aurara (2004) 13 SCC 634*
- (vii) Anuradha Dutta vs Subhash Chandra dutta (2004) 13 SCC 694*
- (viii) Gargi Konar vs. Jagjeet Singh, (2005) 11 SCC 446*

(ix) Preeti Sharma vs Manjit Sharma, (2005) 11 SCC 535

(x) Kakali Pal vs Balali Chandra Pal, (2005) 12 SCC 216

*(xi) Sarita Singh @ Babli Baghel vs A.P. Baghel
(2005) 12 SCC 376*

(xii) Sarita Singh vs A.P. Baghel, (2005) 12 SCC 377

(xiii) Anindita Das vs Srijit Das, (2006) 9 SCC 197

*(xiv) Smt. Rekha wd/o Late Avinash Raut vs Shivaji
Bhimrao Sapate, (2011) 3 ALL MR 279*

*(xv) Smt. Triveni Sagar Jadhav vs Sagar Bajrang Jadhav
(MCA No. 239 of 2019)*

*(xvi) Soniya w/o Laxmikant Kharade vs Laxmikant
Gunwantrao Kharade, (MCA No. 1234 of 2017)*

4. It is significant to note that the applicant is not having any independent source of income and moreover has to maintain her small son begotten out of this wedlock. Further, there are documents on record as to how she suffered from serious disease in delivery. Moreover, the distance between Akola and Ambejogai is also more than 300 kms, and therefore, it would be difficult for the applicant to attend the dates at Akola.

5. Learned Counsel for the respondent-husband has relied upon the above-referred various judgments passed by this Court as well as the Hon'ble Apex Court. The sum and substance of those judgments is that the applicant – wife

cannot claim transfer as of right merely because she is a lady and that on granting certain expenses the applicant – wife can attend the dates of the proceeding at the place where it is originally filed by her husband. Though such observations are there in the aforesaid judgments, but as per the current view of the Hon'ble Supreme Court, inconvenience of wife is to be seen ahead of the inconvenience of husband. Further, the respondent is not residing at Akola, but he is residing at Goa where he is in service as an Engineer, and therefore, even though the proceeding filed by him at Akola is transferred to Ambejogai, there cannot be any difficulty for him considering his place of job at Goa. Moreover, he need not to remain present on each and every date and also he can use the facility of Video Conferencing, if available. Considering all these aspects, the following order is passed.

ORDER

- (i) The application is hereby allowed.
- (ii) Petition No. A-187/2015 pending in the Family Court at Akola is hereby transferred to the Court of Civil Judge (Senior Division) at Ambejogai, District Beed for its disposal according to law.
- (iii) The respondent is directed to appear before the learned Civil Judge (Senior Division),

Ambejogai on or before 15th February 2023.

- (iv) The respondent is at liberty to appear in the aforesaid petition at Ambejogai through his Advocate except the dates on which his physical presence is required. He is also at liberty to use the facility of Video Conferencing, if available.
- (v) The application is disposed of accordingly.

(SANDIPKUMAR C. MORE, J.)