

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

MISCELLANEOUS CIVIL APPLICATION NO. 66 OF 2021

Rupa Vijay Hanchinal,
Age : 36 years, Occu. : Household,
R/o. : Subhash Kutate, Kutate Nivas, 952,
Uttar Kasba, Solapur, Tq. & Dist. Solapur

... APPLICANT

VERSUS

Vijay Kalyanappa Hanchinal,
Age : 40 years, Occu. : Service,
R/o. : 22, Vishalnagar, Bhavsingpur road,
Aurangabad, Tq. & Dist. Aurangabad

... RESPONDENT

WITH

MISCELLANEOUS CIVIL APPLICATION NO. 282 OF 2022

Rupa Vijay Hanchinal,
Age : 36 years, Occu. : Household,
R/o. : Subhash Kutate, Kutate Nivas, 952,
Uttar Kasba, Solapur, Tq. & Dist. Solapur

... APPLICANT

VERSUS

Vijay Kalyanappa Hanchinal,
Age : 40 years, Occu. : Service,
R/o. : 22, Vishalnagar, Bhavsingpur road,
Aurangabad, Tq. & Dist. Aurangabad

... RESPONDENT

WITH

MISCELLANEOUS CIVIL APPLICATION NO. 130 OF 2021

Vijay Kalyanappa Hanchinal,
Age : 42 years, Occu. : Service,
R/o. : 181, MHADA Colony, LIG, Devlai, Aurangabad
Aurangabad, Tq. & Dist. Aurangabad ... **APPLICANT**

VERSUS

Rupa Vijay Hanchinal,
Age : 41 years, Occu. : self-employed,
R/o. : Subhash Kutate, Kutate Nivas, 952,
Uttar Kasba, Solapur, Tq. & Dist. Solapur ... **RESPONDENT**

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Mr. Gajendra D. Jain – Advocate for Applicant (wife)
Mr. Hemant Surve – Advocate for Respondent (husband)

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CORAM : SANDIPKUMAR C. MORE, J.

DATE : 16th March, 2023

JUDGMENT :

1. Since these applications are filed by the wife and husband against each other for transfer of proceedings mentioned therein, I have decided all these applications under a common order.

2. The Miscellaneous Civil Application No.66 of 2021 and Miscellaneous Civil Application No.282 of 2022 are filed by the applicant – wife, whereby Miscellaneous Civil Application No.130 of 2021 is filed by the respondent – husband. The applicant – wife in Miscellaneous Civil Application No.66 of 2021 is seeking transfer of Petition No. A-395 of 2020 filed by the respondent – husband for

getting divorce from the Family Court at Aurangabad to Family Court at Solapur. Similarly, Miscellaneous Civil Application No.282 of 2022 filed by the applicant – wife is seeking transfer of Regular Civil Suit No.58 of 2021 filed by the respondent – husband for getting compensation from the court of Civil Judge, Senior Division, Aurangabad to the court of Civil Judge, Senior Division at Solapur. As against these proceedings the husband filed Miscellaneous Civil Application No.130 of 2021 seeking transfer of Petition No. C-4/2020 and Petition No. E-23/2021 from Family Court at Solapur to Family Court at Aurangabad. It appears that, Petition No. C-4/2020 is filed by the wife for getting alimony under Section 18 of Hindu Adoption and Maintenance Act, 1956 whereas Petition No. E-23/21 is filed by the wife for getting maintenance under Section 125 of the Criminal Procedure Code. Thus, it appears that, there are in all four proceedings going on between the parties.

3. To avoid the ambiguity, the parties in all these applications are referred as per their status i.e. wife and husband.

4. Learned counsel for the wife submits that, she is not having any source of income and the distance between Aurangabad and

Solapur is of 300 Kilometers. Moreover, she is also suffering from illness of Submucosal Fibroid and, therefore, had to perform surgery for the same. As such, she is seeking transfer of the matters as aforesaid.

5. On the contrary, learned counsel for the husband opposed the applications filed by the wife by filing affidavit-in-reply and also prayed in his application that the wife had in fact left the company of husband by making serious allegations. Moreover, the husband had, in fact, filed the petition for restitution of conjugal rights and obtained the decree in the year 2015 against the wife. She refused to join his company and therefore, he had to file divorce proceedings at Aurangabad. He pointed out that almost on 42 occasions matter was listed before the Principal Seat at Bombay in connection with dispute between the husband and wife and she did not raise any complaint for attending such dates. Moreover, the husband is regularly paying maintenance to the wife and it is significant to note that no enhancement of the maintenance is sought by the wife. He placed reliance on the following judgments :

(i) Ramkrushna Somaji Nadekar Vs. Ramkrushna Nadekar and Anr., in Criminal Application No. 1804 of 2009 dated

08.06.2011.

(ii) Sayyed Jabbar Ali Vs. Mst. Saheba Fatima in *Cri. Rev. Appln. No. 1 of 1999 dated 11.10.2001*.

(iii) Raju Rambhu Rathod Vs. Rekha Narsingh Jadhav and Anr. in *Criminal Application No. 3832 of 2013 dated 22.01.2014*.

(iv) Julie Jayesh Shah Vs. Jayesh Trilok Kumar Shah reported in *2013 (1) ALL MR 570*.

(v) Sou. Archana Nandkishor Moon Vs. Nandkishor Vishwanath Moon in *Criminal Application No. 2644 of 2009 dated 25.01.2017*.

(vi) Rajendra Wamanrao Dhomne Vs. Jaishri Rajendra Dhomne and Anr. in *Criminal Revision Application No. 95 of 2013 dated 10.03.2014*.

(vii) Bhagwan Raoji Dale Vs. Sushma alias Nanda Bhagwan Dale in *Criminal Writ Petition No. 688 of 1994 dated 17/18.04.1998*.

(viii) Sayali Swapnil Kumer Vs. Swapnil Harishchandra Kuber in *Misc. Civil Application No. 341 of 2013 decided on 19.09.2013*.

(ix) Satish Jaggi Vs. State of Chhattisgarh and Ors. in *Criminal Appeal No. 241 of 2007 (arising out of S.L.P. (Crl.) No.*

6154 of 2006 dated 22.02.2007.

(x) Kulwinder Kaur @ Kulwinder Gurcharan Singh Vs. Kandi Friends Education Trust and Ors. in *Civil Appeal No. 338 of 2007 (Spl Leave Petition (civil) No. 21147 of 2006) dated 11.01.2008.*

(xi) Lalita Rajya Lakshmi and Anr. Vs. State of Bihar & Anr. in *Misc. Judicial Cases Nos.291 to 293 of 1955 dated 17.11.1955.*

6. Heard rival submissions and also perused upon the documents placed on record along-with the citations relied upon by the learned counsel for the husband. Admittedly, various proceedings, as mentioned above, are going on between the parties wherein serious allegations are levelled by either of the parties against each other. Admittedly, the distance between Aurangabad and Solapur is of 300 Kilometers and, therefore, it appears difficult for a single lady i.e. wife to attend the dates at Aurangabad, since she is residing at Solapur. Though, the learned counsel for the husband relied on various judgments as mentioned above but most of the judgments are on merits and therefore it cannot be considered here since in transfer cases convenience of the parties needs to be seen.

7. Learned counsel for the husband heavily placed reliance upon the judgment of Hon'ble Apex Court in the case of Satish Jaggi Vs. State of Chhattisgarh and Ors., wherein the case was transferred at the instance of plaintiff on the ground that, the respondent had close links with the elder brother of judge who was handling that case. The learned counsel for the husband thus pointed out that the wife had in fact celebrated Childrens' Day in Family Court as she was seen in the photographs with the judge of Family Court at Solapur and therefore contended that, since the judge of Family Court at Solapur is knowing the wife, it would be hazardous for the husband, if the proceedings are allowed to be completed before the same judge of Family Court at Solapur. However, merely because the applicant attended certain function of Childrens' Day, it doesn't mean that she is well acquainted with the Family Court Judge at Solapur.

8. Further, learned counsel for the husband also relied upon the judgment of Hon'ble Apex Court in the case of Kulwinder Kaur @ Kulwinder Gurcharan Singh Vs. Kandi Friends Education Trust and Ors., wherein it is observed that, the transfer made by the High Court, without assigning any reason in respect of allegations

made by the parties against each other, was erroneous. However, it is also held by the Hon'ble Apex Court in so many judgments that when different proceedings are going on between the same parties in different courts based on same sets of facts, then it is always advisable that all such proceedings are to be decided by one and the same judge to avoid the conflict of decisions. In the instant matter, also the allegations raised by either of the parties against each other are similar and therefore the decision in these matters are inter-dependent upon each other. Moreover, the wife has claimed maintenance under different provisions of different Acts and therefore, for deciding quantum of such maintenance amount, all these petitions are to be decided by one and the same court. Further, there is no jurisdictional issue as regards the Regular Civil Suit No. 58 of 2021 filed by the husband for getting compensation on account of malicious allegations and harassment. Moreover, it is also held by the Hon'ble Apex Court in the recent judgments that convenience of wife needs to be seen ahead of the convenience of the husband. In the instant matter it is not disputed that the husband is having salary of Rs.1,50,000/- per month, from his job at Aurangabad. Therefore, comparatively it is more convenient to the husband to attend the dates at Solapur for

all the proceedings. Therefore, considering all these aspects following order is passed :-

ORDER

- (a) Miscellaneous Civil Application No. 66 of 2021 is hereby allowed and Petition No. A-395 of 2020 pending in the Family Court at Aurangabad is hereby transferred to the Family Court at Solapur.
- (b) Likewise, the Miscellaneous Civil Application No. 282 of 2022 also stands allowed and Regular Civil Suit No. 58 of 2021 pending in the court of Civil Judge, Senior Division at Aurangabad is hereby transferred to the court of Civil Judge, Senior Division at Solapur.
- (c) Miscellaneous Civil Application No. 130 of 2021 stands dismissed.
- (d) The husband Vijay Kalyanappa Hanchinal shall appear before the aforesaid concerned courts at Solapur on or before 17th April, 2023. He will be at liberty to request the Family Court at Solapur as well as the Civil Judge, Senior Division at Solapur to give convenient dates for

all the proceedings between himself and his wife, Rupa.

- (e) Further, the husband – Vijay Hanchinal is also permitted to appear before the concerned courts at Solapur through his advocate except on the dates wherever his physical presence is required. He may use facilities of video conferencing wherever possible.
- (f) The applications are accordingly disposed of.

**(SANDIPKUMAR C. MORE)
JUDGE**