

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

MISC.CIVIL APPLICATION NO.122 OF 2023

Anita @ Nishigandha Mahesh Mahajan
Age- 44 years, Occ- Household,
R/o. Anand Nagar, Nanded-Naka,
Udgir, Tq. Udgir, Dist. Latur.

Applicant

Versus

Mahesh Vaijinathrao Mahajan
Age- 53 years years, Occ- Business,
R/o.Flat No. 4, Rama City, Guruji Chowk
Vasmat Road, Nanded,
Tq. & Dist. Nanded.

Respondent

Mr. P.S. Mantri h/f. Mr. P.V. Barde, Advocate for applicant.
Mr. G.D. Kale, Advocate for respondent.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 12th OCTOBER, 2023

ORDER :

1. This application is filed by the applicant/wife seeking transfer of proceeding i.e. Petition A No. 376/2021 filed by respondent/husband in the Family Court, Nanded to Civil Judge Senior Division, Udgir, Dist. Latur.

2. It is the contention of the wife that she has filed Criminal Misc. Application No. 295/2017 against husband for payment of arrears of maintenance and same is pending before learned Judicial Magistrate First Class, Udgir. She is residing with

her parents and has no source of income. She has two children aged about 15 years and 20 years. Distance between Nanded to Udgir is about 120 km and it is difficult for her to travel such a long distance and bear travelling expenses. She therefore prays for transfer of Petition A No. 376/2021 from Family Court, Nanded to learned Civil Judge, Senior Division, Udgir, Dist. Latur.

3. Learned advocate for the husband vehemently opposed the prayer contending that respondent is ready to cohabit with applicant and is also ready to bear her travelling expenses.

4. Heard the learned advocate for the applicant and learned advocate for the respondent. Perused the memo of application, annexures thereto and the reply filed by respondent.

5. It is well settled principle of law that ordinarily convenience of the wife needs to be considered while deciding application for transfer of proceeding. In **N.C.V. Aishwarya Vs. A.S. Saravana Karthik Sha**, 2022 SCC OnLine SC 1199, it is held;

"9. The cardinal principal for exercise of power under Section 24 of the Code of Civil Procedure is that the ends of justice should demand the transfer of the suit, appeal or other proceeding. In matrimonial matters, wherever Court are called upon to consider the plea of transfer, the Courts have to take into

consideration the economic soundness of both the parties, the social strata of the spouses and their behavioural pattern, their standard of life prior to the marriage and subsequent thereto and the circumstances of both the parties in eking out their livelihood and under whose protective umbrella they are seeking their sustenance to life. Given the prevailing sociology-economic paradigm in the Indian society, generally, it is the wife's convenience which must be looked at while considering transfer."

6. In the light of aforesaid ratio and since proceeding i.e. Criminal Misc. Application No. 295/2017 is pending before learned Judicial Magistrate First Class, Udgir, and it would cause inconvenience and hardship to wife if she asked to travel such a long distance to attend the proceeding at Nanded, it is desirable to transfer proceeding i.e. Petition A No. 376/2021 pending in Family Court, Nanded to learned Civil Judge, Senior Division, Udgir, District- Latur. In the result, following order:

ORDER

1. Civil Miscellaneous Application is allowed.
2. Petition A No. 376/2021 filed by respondent/husband in the Family Court, Nanded is hereby transferred to learned Civil Judge, Senior Division, Udgir, Dist. Latur.

[NITIN B. SURYAWANSHI, J.]