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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

MISCELLANEOUS CIVIL APPLICATION NO.118 OF 2023

Pratibha Mahesh Wankhede

APPLICANT

VERSUS

Mahesh Prakashrao Wankhede

RESPONDENT

.....

Ms. Priyanka Prakash Shinde Advocate for the applicant
Mr. Dinesh Manwatkar h/f Mr. S.S.Randive, Advocate for the
respondent

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 28th AUGUST, 2023

ORDER :

1. Leave to correct the prayer clause.
2. This application is filed by the applicant/wife seeking transfer of proceeding i.e. Special Marriage Petition No. 18 of 2021 filed by respondent/husband for divorce in the Court learned District Judge, Chandrapur to the Court of learned Civil Judge, Senior Division at Ambajogai District – Beed.
3. 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.

4. It is the contention of the wife that proceedings RCC No. 234 of 2022 filed by herS under section 498A, 323, 504, 506 read with section 34 of the Indian Penal Code is pending in the Court of learned Judicial Magistrate First Class at Parli, Vaijnath, District - Beed and therefore, the proceeding filed by the husband at Chandrapur, may be transferred at Ambajogai.

5. Learned advocate for the husband vehemently opposed the prayer contending that the divorce proceeding is filed at Chandrapur Court as the parties last resided together at Chandrapur and therefore this proceeding is not liable to be transferred. Further submission is that no inconvenience is likely to be caused to the wife if the proceeding is retained at Chandrapur.

6. Learned advocate for the wife submits that, considering the distance between Parli Vaijnath and Chandrapur which is 440 k.m., it would be very difficult for her to travel such a long distance along with her two and half year old child, to attend the Court proceedings at Chandrapur.

7. It is well settled principal of law that ordinarily convenience of the wife needs to be considered while deciding application for

transfer of proceeding.

8. 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.”

9. In the facts of the present case, since proceedings of RCC No. 234 of 2022 are already pending before the Court at Parli Vaijnath, District - Beed, it is desirable to transfer proceeding of Special Marriage Petition No. 18 of 2021 pending in the Court of learned District Judge, Chandrapur to the Court of learned Civil Judge, Senior Division, Ambajogai, District – Beed. In the result, following order:

ORDER

A. Civil Miscellaneous Application is allowed.

B. Special Marriage Petition No. 18/2021 filed by

respondent/husband in the Court of learned District Judge, Chandrapur, is hereby transferred to the Court of learned Civil Judge, Senior Division at Ambajogai, District - Beed.

- C. Considering the request made by the respondent, both the proceedings i.e. Special Marriage Petition No.18 of 2021 filed by the respondent under section 27 of the Special Marriage Act and Regular Civil Suit No. 234 of 2022, shall be kept on the same day.

[NITIN B. SURYAWANSHI]
JUDGE