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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

MISCELLANEOUS CIVIL APPLICATION NO.112 OF 2023

Samina Raju Shaikh

APPLICANT

VERSUS

Raju Babulal Shaikh

RESPONDENT

.....

Mr. Swapnil S. Rathi, Advocate for applicant

Mrs. Rani Bora, Advocate for respondent (appointed)

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 21st SEPTEMBER, 2023

ORDER :

1. This application is filed by applicant – wife for transfer of Regular Civil Suit No. 66 of 2022 from the Court of learned Civil Judge, Junior Division, Malshiras to Family Court at Parbhani.
2. It is contention of applicant – wife that she is residing with her old and infirm parents at Parbhani along with her two minor children. Parbhani is at a distance of about 316 km from Malshiras, where respondent – husband has filed Regular Civil Suit No. 66 of 2022, for restitution of conjugal rights. It is further contention of wife that proceedings filed by her under the Domestic Violence Act bearing Criminal Miscellaneous Application No. 12 of 2019 is already pending at Parbhani Court. It would

be inconvenient for her to travel such a long distance to attend court proceedings at Malshiras. Her parents are not in a position to accompany her. Since husband is already attending proceedings at Parbhani, the proceedings may be transferred to Parbhani.

3. Learned advocate appointed for respondent – husband vehemently opposed the prayer of applicant – wife contending that respondent is in Government Service working in hospital and it would be difficult for him to obtain leave to attend court proceedings at Parbhani. He is ready to bear travelling expenses of wife to attend court proceedings at Malshiras.

4. 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 principle 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.”

5. Considering the fact that proceedings bearing Criminal Miscellaneous Application No.12 of 2019 filed by wife, under the Domestic Violence Act are pending at Parbhani, which husband is attending and as it would be inconvenient for wife to attend court proceedings at Malshiras, application deserves to be allowed.

6. In the result, following order

ORDER

- A. Miscellaneous Civil Application is allowed
- B. Regular Civil Suit No. 66 of 2022 pending before learned Civil Judge, Junior Division, Malshiras, District – Solapur is hereby transferred to Family Court, Parbhani.
- C. Fees payable to learned advocate appointed to represent respondent is quantified at Rs. 2500/-, to be paid by High Court Legal Services, Sub Committee, Aurangabad, within a period of four weeks from today.
- D. Considering the request made by the respondent, both the proceedings i.e. Regular Civil Suit No.66 of 2022 and Criminal Miscellaneous Application No. 12 of 2019 shall be kept on the same day.

[NITIN B. SURYAWANSHI]
JUDGE