

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

MISC.CIVIL APPLICATION NO.152 OF 2022

**MAYURI VISHAL VARMA
VERSUS
VISHAL PARASRAM VARMA**

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Mr. Dhiraj.R. Jethliya, Advocate for the applicant.

Mr. Hemant Surve, Advocate for the respondent.

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CORAM : SANDIPKUMAR C. MORE, J.

DATED : 23.02.2023.

ORDER:-

1. The applicant – wife is seeking transfer of Petition No.A-430/2021 filed by the respondent – husband for getting divorce, from the Family Court, Latur to the Court of Civil Judge (Senior Division) at Washim.

2. According to the applicant, she is resident of Malegaon in Washim District and since there is no Court of Senior Division at Malegaon, she is claiming transfer at Washim which is nearer to her place of residence. Further, according to her, there are two proceedings filed by her at Malegaon. One is under the provisions of Protection of Women from Domestic Violence Act, 2005 and another is under Section 498-A of the Indian Penal Code. She claims that she does not have any independent source of income and at

present she is maintaining one daughter of 8 years and one son of 2 years. The distance between Washim and Latur is 325 kms and considering the fact that her father is suffering from Cancer, it is highly difficult for her to attend the dates at Latur. On the contrary, the respondent has already appeared in the proceeding filed under Domestic Violence Act at Malegaon, District Wahsim and it would be convenient for him than her to attend the dates of the proceeding at Washim instead of Latur.

3. On the contrary, the respondent – husband, by filing affidavit-in-reply, strongly opposed the application on the ground that there is need of mediation in this matter, but due to adamant nature of the applicant - wife, it could not be done till today. The learned Counsel for the respondent – husband submits that the respondent is paying regular maintenance to the applicant despite being suffering from many ailments. He pointed out that the documents produced by the applicant do not reflect that her father is suffering from Cancer. Moreover, the applicant is also earning since she is in profession of teaching. He relied on the various photographs produced by respondent on record, wherein it can be seen that the applicant is in teaching profession in one Vidarbha Public

School. He further submits that the respondent is ready to bear the transport expenses of the applicant for attending the dates at Latur. Besides, he relied on the various judgments as follow :

- (i) ***Anindita Das vs. Srijit Das, (2006) 9 SCC 197***
- (ii) ***T. Gayatri Devi vs. Tallepaneni Sreekanth, MANU/SC/857/2013***
- (iii) ***Kulwinder Kaur @ Kulwinder vs Kandi Friends Education Trust and others, (2008) 3 SCC 659***
- (iv) ***MCA No. 121 of 2022 (Rekha vs Narba @ Naresh) Decided on 21.10.2022.***

4. Heard rival submissions. Also perused the documents on record. It is extremely important to note that though the respondent has filed divorce petition at Latur, but he is equally attending the dates at Malegaon in the D.V. proceeding lodged by applicant wife against him. Moreover, there are two children who, at present are being maintained by the applicant. Moreover, it appears that father of the applicant is old aged person and considering the distance between Latur and Malegaon i.e. around 325 kms, it would be difficult for the applicant to attend the dates at Latur.

5. Learned Counsel for the respondent has heavily relied on the aforesaid judgments. In the case of ***Anindita Das vs Srijit Das*** (supra) the Hon'ble Apex Court has held that

though the child is of tender age, there are grand-parents to look after the said child and when respondent husband is willing to pay all the expenses of travel, there cannot be any ground of transfer of petition for wife.

6. In the next judgment, in the case of ***T. Gayatri Devi vs. Tallepaneni Sreekanth*** (supra), it has been held by the Hon'ble Apex Court that High Court committed error by granting transfer as claimed by the wife, especially when she was capable of travelling from Kakinada to Hyderabad.

7. Further, the Hon'ble Apex Court, in the case of ***Kulwinder Kaur vs Kandi Friends Education Trust*** (supra), has referred it's earlier judgment in the cases of Maneka Sanjay Gandhi vs Rani Jethmalani, (1079) 2 SCR 378 and Subramaniam Swamy vs Ramkrishna Hegde, (1990) 1 SCC 4, wherein certain criteria are discussed regarding transfer of cases. However, the facts of these cases are relating to transfer of cases other than matrimonial proceedings, and therefore, the same cannot be applied in this matter.

8. Further, the learned Counsel for the respondent also relied on the order dated 21st October 2022 passed by this Court in MCA No. 121 of 2022 wherein the application of wife

for transfer has been rejected with direction to the respondent – husband to provide conveyance charges to the applicant – wife. However, in the said judgment, the distance of travelling was only 100 kms and it was found that the wife had already participated in the proceeding at the place from which she was seeking the transfer.

9. As per the current view of the Hon'ble Apex Court, wife's convenience must be looked into while considering the transfer in matrimonial matters. Further, when two or more proceedings are pending in different Courts between the same parties, which raise common question of fact and law and when the decisions in the cases are interdependent, it is desirable that they should be tried together by the same Judge, so as to avoid multiplicity in trial of the same issues and conflict of decisions. This has been observed by the Hon'ble Supreme Court in the case of *N.C.V. Aishwarya vs A.S. Saravana Karthik Sha* reported in *2022 LiveLaw (SC) 627*, relied by the applicant – wife.

10. In this matter also, the respondent has already appeared at Malegaon in D.V. proceeding initiated by applicant – wife. Moreover, he will have to attend the dates of criminal prosecution under Section 498-A of I.P.C. at Malegaon itself.

The allegations in these proceedings and the proceeding at Latur are based on the same set of facts and the decisions in all these cases are interdependent. Therefore, in view of the observation of Hon'ble Apex Court in the latest decision cited supra, the following order is passed.

ORDER

- (i) The application is hereby allowed.
- (ii) Petition No. A-430/2021 pending in the Family Court, Latur is hereby transferred to the Court of Civil Judge (Senior Division) at Washim for its disposal according to law.
- (iii) The respondent is directed to appear before the learned Civil Judge (Senior Division), Washim on or before 15th March 2023.
- (iv) The application is disposed of accordingly.

(SANDIPKUMAR C. MORE, J.)