

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

MISC.CIVIL APPLICATION NO.187 OF 2022

Ankita Gitesh Kulkarni

Versus

Gitesh Umakant Kulkarni

AND

CRIMINAL APPLICATION NO.2210 OF 2022

- | | | |
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| 1. | Sow. Ankita Gitesh Kulkarni | |
| 2. | Ku. Ayush s/o Giresch Kulkarni | ...Applicants |

Versus

- | | | |
|----|--------------------------------|----------------|
| 1. | Gitesh Umakant Kulkarni | |
| 2. | Umakant s/o Kishanrao Kulkarni | |
| 3. | Jayashri w/o Umakant Kulkarni | |
| 4. | Ashwini Vikram Chitgopekar | |
| 5. | Geetanjali w/o Amol Kulkarni | ...Respondents |

...

Advocate for Applicant : Mr. Kulkarni Girish N. (Mardikar)

Advocate for Respondent : Mr. R.P. Adgaonkar

...

CORAM : SHAILESH P. BRAHME, J.

DATE : 7th DECEMBER 2023.

Per Court :

1. Heard both the sides finally. Both the applications are clubbed and heard together. Both the applications are filed by wife seeking transfer of proceedings.

2. The applicant/wife stays at Pune. The respondent/husband stays at Omerga, Dist. Osmanabad and has filed HMP No.90/2019 for

separation. He has further filed HMP No.84/2021 for dissolution of marriage. Both the applications are filed before the learned Civil Judge, Senior Division, Omerga against the applicant/wife. The applicant/wife has filed PWDVA Case No.37/2020 before the Judicial Magistrate, First Class, Omerga against respondent/husband as well as other family members. The applicant/wife prays to transfer those proceedings pending before the Courts at Omerga to the learned Family Court at Pune.

3. The learned Counsel for the applicant submits that there is an issue out of the said wedlock, staying with the applicant. The applicant is awarded interim maintenance of Rs.10,000/- per month. Besides that as interim arrangement, she has been allotted part of the house situated at Omerga in the proceeding of PWDVA case No.37/2020.

4. The applicant is unable to travel the distance from Pune to Omerga. She has already instituted proceeding for maintenance in Family Court, Pune bearing Petition E. No.118/2023. The respondent / husband is able bodied person and can travel.

5. The learned Counsel for the respondent/husband and other family members who are parties in the criminal matter, has vehemently opposed the request of transfer. He has pointed out that the part of house which was allotted to the applicant, has been let out and she is earning from the same. The proceedings which are pending at Omerga, are on the verge of completion. The respondent/husband is ready to

bear the expenses for traveling. According to him, this is not a fit case to transfer the proceedings. Learned Counsel would submit that the other family members who are parties in PWDVA No.37/2020 are aged and ailing. It would be inconvenient for the respondent/husband to keep himself and alongwith other respondents present at Pune.

6. I have considered the rival submissions of the parties. The applicant is looking after son and she is staying at Pune. If I considered comparative hardship, the discretion tells in favour of the applicant.

7. The participation of the applicant has to be effective. Just because the proceedings are on the verge of completion cannot be a ground to reject the request of respondent. It transpires that the applicant has not led her evidence in the Court at Omerga in any of the manner. In that scenario, I am not ready to accept the submissions of learned Counsel for the respondent.

8. The grievance of the learned Counsel for the respondent is that the other respondents besides husband are aged and it is inconvenient for them to attend the proceedings. The parties are at liberty to request the Presiding Officer for exemption of appearances. Following judgments support applicant:

A. Sumita Singh Vs. Kumar Sanjay reported in (2001) 10 SCC 41.

B. Soma Chaudhury Vs. Gourab Choudhary reported in (2004) 13 SCC 462.

- C. Vaishali Shridhar Jagtap Vs. Shridhar Vishwanath Jagtap reported in (2016) 14 SCC 356.
 - D. Sangamitra Ramakant Royalwar Vs. Ramakant Gangaram Royalwar reported in 2009 (1) Mh.L.J. 303.
 - E. Anita Balkrishna Barge Vs. Balkrishna Sopan Barge reported in 2011(1) Mh.L.J. 518.
 - F. Mahadevi Gopal Mehetre Vs. Gopal Prabhakar Mehetre reported in 2016(4) All M.R. 599.
 - G. Judgment and order dated January 11, 2019 in Misc. Civil Application No.171/2018 in the matter of Pooja Rohan Jadhav Vs. Rohan Ramesh Jadhav.
 - H. Judgment and order dated 01 July 2022 in Misc. Civil Application No.46/2020 in the matter of Ashwini Kailas Patil Vs. Shivajirao Anandrao Gaekwar.
9. For the reasons stated above, I pass following order.

ORDER

- a. Both the applications are allowed.
- b. The proceedings bearing H.M.P No. 90/2019 and H.M.P No.84/2021 pending before the learned Civil Judge, Senior Division Taluka Omerga, Dist. Osmanabad and PWDVA Case No.37/2020 pending before the Judicial Magistrate, First Class, Omerga shall stand transferred to the Family Court at Pune.
- c. The parties shall cause their appearance before the learned Family Court at Pune on 08.01.2024.
- d. The parties are at liberty to request for exemption of the appearances.

- e. The Presiding Officer of the Family Court at Pune is requested to keep all the matters of the parties in a day. It is further requested to conclude the proceedings as expeditiously as possible.

[SHAILESH P BRAHME, J.]

Najeeb.