

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

979 MISC.CIVIL APPLICATION NO.167 OF 2021

ANITA PREMCHAND KADAM
VERSUS
PREMCHAND BABURAO KADAM

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Mr. K.A. Khole and Mr. B.S. Sable, Advocates for the applicant.
Mr. Chandrakant Patil, Advocate for the respondent.

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CORAM : SANDIPKUMAR C. MORE, J.

DATED : 30th March 2023.

ORDER:-

1. Heard rival submissions.
2. The applicant – wife is seeking transfer of HMP No.A-95/2018 filed by respondent- husband for getting divorce and petition A-92/2019 filed by her for restitution of conjugal rights, from the Family Court, Latur to the Family Court at Aurangabad.
3. According to the the applicant-wife, she is not having any independent source of income and she is also having one son to look after. Moreover, the distance between her current place of residence i.e. Farola, Taluka Paithan is 360 kms away from Latur and therefore, she is unable to attend the dates at Latur.
4. The learned counsel for the respondent- husband strongly opposed the application on the basis of affidavit in reply filed by the respondent husband on the ground that the applicant has actively participated in the aforesaid divorce proceeding pending at Latur. Moreover, she herself has filed

marriage petition before Family Court, Latur for restitution of conjugal rights. He further submits that the applicant wife has also filed proceeding under Protection of Women from Domestic Violence Act against the respondent husband at Omerga, District Osmanabad wherein she is seeking maintenance to her minor son. Moreover, the Family Court, Latur has also granted interim maintenance under Section 24 of Hindu Marriage Act at the rate of Rs. 5,000/- per month alongwith the travelling expenses at the rate of Rs. 600/- per trip. According to him, the said divorce petition is at the stage of evidence and therefore, the application needs to be rejected.

5. It is significant to note that the applicant has actively participated in the proceeding of divorce at Family Court, Latur. She has even secured interim maintenance at the rate of Rs. 5000/- per month alongwith the travelling expenses Rs. 600/- per trip. The learned Counsel for respondent husband produced on record the receipts in respect of payment of interim maintenance. From those receipts it appears that the respondent has cleared the dues of that maintenance amount by paying almost Rs. 1,72,000/-. Moreover, the status report in respect of the divorce proceeding clearly indicates that the matter is now fixed for cross examination of respondent husband. It is extremely important to note that the applicant herself has filed proceeding under PWDV Act against respondent wherein she has sought maintenance to her minor son. Moreover, she is regularly attending the dates of said proceeding and has not filed any application for transfer of said proceeding from Omerga to Aurangabad. Thus, it appears that the applicant is actively participating the proceeding at Latur and Omerga. Moreover,

interim maintenance alongwith travelling expenses is also granted to her. The petition which is sought to be transferred in this application is at the stage of evidence and can be decided within near future.

6. Admittedly, convenience of the wife is to be seen ahead of the convenience of husband, but considering the peculiar facts of this case as aforesaid, I am not inclined to grant the transfer as claimed by the applicant at this juncture. As such, following order is passed.

ORDER

- (i) The application is hereby rejected.
- (ii) However, the learned Family Court, Latur is directed to dispose of the petition No.A-95/2018 alongwith the Petition No. A-92/2019 as early as possible.
- (iii) The parties shall not seek unnecessary adjournments
- (iv) The application is disposed of accordingly.

(SANDIPKUMAR C. MORE, J.)