

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

MISC.CIVIL APPLICATION NO.217 OF 2023

Ayesha w/o. Majjamil Shaikh
Age- 21 years, Occ- Household,
R/o. Shankar Nagar, Parbhani,
At Present Ayubkha Shafiqkha Pathan
Near Railway Station, Pangaon,
Tq. Renapur, Dist. Latur.

Applicant

Versus

Mujjamil s/o Karim Shaikh
Age- 24 years, Occ- Mechanic,
R/o. Near Mohammad Masjid,
Shankar Nagar, Parbhani,
Tq. & Dist. Parbhani.

Respondent

Mr. Vikrant Valse h/f. Mr. T.M. Venjane, Advocate for applicant.
Ms. Pratibha R. Jamdhade, appointed for respondent.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 12th OCTOBER, 2023

ORDER :

1. This application is filed by the applicant/wife seeking transfer of proceeding i.e. Petition A No. 77/2023 filed by respondent/husband in Family Court, Parbhani to learned Civil Judge, Senior Division, Latur.

2. It is the contention of the wife that she has filed Misc. Criminal Application No. 115/2023 in the Court of learned Judicial Magistrate First Class, Renapur against

respondent/husband for maintenance. She has recently given birth to male child and it would be difficult for her to travel a distance of 90 km along with suckling child. She therefore prays for transfer of Petition A No. 77/2023 from Family Court, Parbhani to learned Civil Judge, Senior Division, Latur.

3. Learned advocate for the husband vehemently opposed the prayer of the wife. He submits that he is the only earning member of family and he will be loosing his earning source for attending the the matter at Latur on each and every date.

4. 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.

5. 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 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."

6. In the light of aforesaid ratio and since proceedings i.e. Misc. Criminal Application No. 115/2023 is pending before Judicial Magistrate First Class, Renapur, and it would cause inconvenience and hardship to wife if she asked to travel such a long distance with her suckling child, it is desirable to transfer proceeding i.e. Petition No. A 77/2023 pending in Family Court, Parbhani to learned Civil Judge, Senior Division, Latur. In the result, following order:

ORDER

1. Civil Miscellaneous Application is allowed.
2. Petition A No. 77/2023 filed by respondent/husband in the Family Court, Parbhani, is hereby transferred to the learned Civil Judge, Senior Division, Latur.

7. Fees of learned advocate appointed to represent respondent is quantified at Rs. 2500/-to be paid by High Court

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1001-MCA-217-2023

Legal Services (Sub-Committee), Aurangabad, within a period of four weeks from the date of receipt of this order.

[NITIN B. SURYAWANSHI, J.]