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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

MISCELLANEOUS CIVIL APPLICATION NO.153 OF 2019
WITH
MISCELLANEOUS CIVIL APPLICATION NO. 260 OF 2022

Dipali Ganesh Kate

APPLICANT

VERSUS

Ganesh Sudhakar Kate

RESPONDENT

.....
Mr. M. B. Pophale h/f Mr. P.A. Kulkarni, Advocate for applicant
Mr. A. B. Kadethankar, Advocate for respondent
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 12th OCTOBER, 2023

ORDER :

1. Miscellaneous Civil Application No. 153 of 2019 is filed by applicant – wife seeking transfer of Hindu Marriage Petition No. 161 of 2018, filed by respondent – husband seeking divorce, in the Court of learned Civil Judge, Senior Division, Khed, District – Punt to the Court of learned Civil Judge, Senior Division, Aurangabad.

2. Miscellaneous Civil Application No. 260 of 2022 is filed by the applicant- wife seeking transfer of Civil Miscellaneous Application No. 19 of 2018 filed by respondent – husband seeking custody of both the children, in the court of learned

District Judge, Khed, District- Pune, to Aurangabad.

3. Since both the applications raise similar questions of fact and law and between the same parties, they were heard together and are being decided by this common order.

4. Heard the learned advocate for the applicant and learned advocate for the respondent. Perused the memo of applications, annexures thereto and the reply filed by respondent.

5. It is the contention of the wife that distance between Khed and Aurangabad is approximately 220 km and it would be very difficult for her to travel such a long distance along with her minor children. It is further submitted that the applicant is facing medical problem and she has to take assistance of some relative with her and therefore, the proceedings filed by the husband at Khed, may be transferred at Aurangabad.

6. Learned advocate for the husband vehemently opposed the prayer contending that the divorce proceeding is filed at Khed Court as the parties last resided together at Khed and therefore this proceeding is not liable to be transferred. Further submission is that no inconvenience is likely to be caused to the wife if the proceeding is retained at Khed.

7. It is well settled principle of law that ordinarily convenience of the wife needs to be considered while deciding application for transfer of proceeding.

8. 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.”

9. In the facts of the present case and in the interest of justice, it is desirable that the proceedings are transferred at Aurangabad. In the result, following order:

ORDER

A. Civil Miscellaneous Applications are allowed.

B. Hindu Marriage Petition No. 16 of 2018 and filed by respondent/husband in the Court of learned Civil Judge,

Senior Division, Khed, District-Pune and Civil
Miscellaneous Application No. 19 of 2018 filed in the
Court of learned District Judge Khed, District Pune, are
hereby transferred to Family Court, Aurangabad.

[NITIN B. SURYAWANSHI]
JUDGE

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