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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

MISCELLANEOUS CIVIL APPLICATION NO.302 OF 2021

Komal Rajabhau Aghav

APPLICANT

VERSUS

Rajabau Prabhakar Aghav

RESPONDENT

.....

Mr. Murlidhar S. Karad, Advocate for the applicant

Mr. Shrimant Mundhe, Advocate for the 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. HMP No. A-372 of 2021 filed by respondent/husband for restitution of conjugal rights in the Family Court at Aurangabad to the Court of learned Civil Judge, Senior Division at Ambajogai District – Beed.
2. Heard the learned advocate for the applicant and learned advocate for the respondent. Perused the memo of application and annexures thereto.
3. It is the contention of the wife that the applicant has filed

Hindu Marriage Petition No. 162 of 2021 seeking divorce in the Court of learned Civil Judge, Senior Division, Ambajogai. It would be very difficult for her to attend each and every date in the Court at Aurangabad, which is approximately 220 km from Ambajogai and therefore, the proceeding filed by the husband at Aurangabad, may be transferred at Ambajogai. The applicant – wife contends that the husband is elected as Sarpanch of village Daunapur, Taluka – Parli, which is at a distance of 20 km from Ambajogai, where the proceedings are sought to be transferred.

4. Learned advocate for the husband vehemently opposed the prayer contending that marriage of the parties is solemnized at Aurangabad and after marriage both of them resided together at Aurangabad. Thereafter the husband filed proceedings at Aurangabad. He further submits that the husband is ready to bear the expenses incurred by the wife for attending the Court proceedings at Aurangabad. According to him, notice of the proceeding filed by the husband is served on the applicant – wife at Shirdi, therefore, prayer of the applicant – wife deserves to be dismissed.

5. It appears from the record that the applicant is presently residing at Tapovan, Taluka – Parli, District – Beed, which is her

maternal home.

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

7. 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.”

8. In the facts of the present case, since proceedings of HMP No. 162 of 2021 filed by wife are already pending before the Court at Ambajogai, District - Beed, it is desirable to transfer proceeding of HMP No. A-372 of 2021 pending in the Family Court Aurangabad to the Court of learned Civil Judge, Senior Division, Ambajogai, District – Beed. In the result, following order:

ORDER

- A. Civil Miscellaneous Application is allowed.
- B. Hindu Marriage Petition No. A-372 of 2021 filed by respondent/husband in the Family Court At Aurangabad is hereby transferred to the Court of learned Civil Judge, Senior Division at Ambajogai, District - Beed.

**[NITIN B. SURYAWANSHI]
JUDGE**