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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

MISCELLANEOUS CIVIL APPLICATION NO.309 OF 2022

Dr. Shital Suryakant Savant @ Shital Mrinal Patil APPLICANTS
and Another

VERSUS

Dr. Yogesh Shivajirao Ghotekar RESPONDENT

.....
Mr. Shivraj B. Kadu, Advocate for the applicant
Mr. Rahil R. Kazi, Advocate for the respondent

.....
[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. D Petition No. 2 of 2021 filed by respondent/husband under section 25 of the Guardians and Wards Act, 1890 seeking visitation rights of son Rudraksh-applicant No.2, from the Family Court Nasik to Family Court Jalna

2. Admittedly, marriage between applicant No.1 and respondent is dissolved by mutual consent on 12th November, 2019. Thereafter, on 7th January, 2021, respondent husband filed proceeding at Family Court Nashik seeking visitation rights to the child.

3. 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.

4. It is the contention of the wife that she is residing at Badnapur, District – Jalna. She has performed second marriage. It is further submitted that applicant No.2 is taking education in 4th Standard at Buldhana and she is taking utmost care of him. It is submitted that the applicant is taking medical treatment and total rest is advised to her by the doctor. Distance between Jalna and Nasik is about 250 km and it will be highly difficult for her to attend the proceedings at Nasik. It is, therefore, prayed to transfer to proceedings at Jalna.

5. Learned advocate for the respondent - husband vehemently opposed the prayer on the ground that Nasik Court has already rejected the prayer of transfer of proceedings to Jalna. It is further submitted that by filing the proceedings in Nasik Court, the respondent – husband has only prayed for visitation rights of the minor, therefore, presence of applicant No.1 is not necessary on each and every date.

6. These arguments cannot be accepted as Nasik Court has

no jurisdiction to entertain the prayer of inter District transfer of proceedings. 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 result, following order:

ORDER

- A. Civil Miscellaneous Application is allowed.
- B. Proceedings of Petition D -2 of 2021 filed by husband in the Family Court at Nasik are hereby transferred to the Family Court at Jalna.

[NITIN B. SURYAWANSHI]
JUDGE