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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

MISC. CIVIL APPLICATION NO. 216 OF 2024

Abhishek Aich	.. Applicant
Versus	
Reema Talwar Aich	.. Respondent

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- Mr. Naveen Sharma, Advocate for Applicant.
 - Mr. Sanjay Bhojwani, Advocate for Respondent.
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CORAM : MILIND N. JADHAV, J.

DATE : SEPTEMBER 06, 2024.

P.C.:

1. Heard Mr. Sharma, learned Advocate for Applicant and Mr. Bhojwani, learned Advocate for Respondent.

2. Present Misc. Civil Application (for short “**MCA**”) filed by the Petitioner – husband seeks transfer of Criminal Misc. Application No.586 of 2016 pending before the Judicial Magistrate First Class (for short “**JMFC**”), Cantonment, Pune to the Family Court No.5, Pune. There is a Marriage Petition which is filed by Respondent and pending in the Family Court No.5, Pune.

3. Mr. Sharma, learned Advocate would submit that considering the issue, rather common issues which are questions of fact and law that would be involved in both the proceedings, it would be in the interest of justice, if the Application pending before the JMFC

Court is transferred to the Family Court No.5 to be heard alongwith Marriage Petition so as not to have multiplicity of proceedings and conflict of decisions by two different Courts. He would submit that considering the aforesaid two proceedings, which are pending in two different Courts between the same parties and the fact that there is a common question of fact and law, it would be desirable that they should be tried together by the Family Court No.5, Pune.

4. *PER-CONTRA*, Mr. Bhojwani, learned Advocate for Respondent – wife though at the outset would raise multiple grievances with respect to opposing the transfer of proceedings and has also placed before the Court a decision of the learned Single Judge of this Court (Coram: Arun R. Pednekar, J.) dated 09.07.2024 passed in MCA No.159 of 2023. On the Court expressing its imprimatur that the Court has already considered the said decision in a similar placed case in MCA No.58 of 2024 dated 04.09.2024, learned Advocate would then submit that if the Court is inclined to allow the MCA, then Respondent be permitted to make certain submissions for seeking intervention of the Court so that the transferred proceedings and the incumbent proceedings are heard together in accordance with law. The Court has permitted the learned Advocate to make his submissions on that count. Advocate for Respondent has made four specific submissions seeking indulgence of the Court. Firstly, he would submit that considering the fact that the stage of the proceedings before the

JMFC Court and the Family Court be different, when the transfer takes place, this Court be pleased to pass direction qua two specific issues namely one concerning the applicability of the interim orders which are already passed by the JMFC Court in the proceedings between the parties and also with respect to the evidence that is recorded of the parties by the JMFC Court.

5. Mr. Bhojwani would express an apprehension that if the proceedings are transferred, the transferee Court i.e. Family Court should not refrain from considering the interim orders as also the evidence of the parties which has been recorded by the JMFC Court. This apprehension expressed by the Respondent is infact well answered by the Court while referring to the provisions of the Family Courts Act, 1984 in the case of ***Sandip M. Chakrabarty Vs. Reshita Sandip Chakrabarty***¹, decided on 06.09.2008 in Criminal Writ Petition No.5649 of 2015. Respondent need not have any apprehension whatsoever considering the imprimatur of this Court for the aforesaid ruling that the Family Court is deemed to be a Civil Court for all powers of the Civil Court including its inherent power to grant interim relief. This imprimatur was given by this Court in the aforesaid decision since similar arguments were advanced with respect to the absence of analogous provisions in the Family Courts Act akin to the provisions of Section 12 and Section 23 (2) in the Protection of

¹ 2018 SCC Online Bom. 2709

Women from Domestic Violence Act, 2005. This Court has further in paragraph No.13 of the said decision held as under:-

*“13. The Hon’ble Supreme Court in the case of Ramesh (Supra) has directed to overcome the issue of overlapping jurisdiction and to avoid conflicting orders being passed in different proceedings, the Claimant in the subsequent maintenance proceedings shall disclosed the previous maintenance proceedings and the orders passed thereto so that the Court would take maintenance already awarded in the previous proceedings and grant an adjustment of the said amount. Conflict has to be thus judicially managed applying the principles laid down by the Supreme Court in the case of **Satish Chander Ahuja (Supra) and Ramesh V/s. Neha (Supra).**”*

6. In view of the above, the submissions made by the learned Advocate for Respondent undoubtedly stand fully protected. What is transferred is the entire proceedings under the DV Act before the JMFC Court to the Family Court including the interim orders as also the evidence of the parties that is recorded.

7. By virtue of the present transfer Application what is deemed by the power conferred under Section 24(1) of the Code of Civil Procedure, 1908 is also the power to club the said proceedings together and to be dealt with by the same Court. There can be no deprivation of any relief available to the Respondent, if the proceedings stand transferred to the Family Court No.5. Undoubtedly, learned Family Court is fully empowered to deal with the transferred proceedings as also the interlocutory / interim orders passed therein and also will consider the evidence that has been recorded between the parties and appropriately deal with the issues between the parties.

8. Learned Advocate for Respondent would submit that the JMFC, Cantonment, Pune has already heard the parties on an interlocutory Application filed by Respondent seeking enforcement of payment of arrears which has already been directed to be paid by the Court to the Respondent and after hearing both the parties, the said Application has been posted for orders on 09.09.2024.

9. A server copy of this order shall be placed before the concerned JMFC, Cantonment, Pune on 09.09.2024 at 10:30 a.m.. The learned concerned JMFC, Cantonment, Pune is directed by this Court to deliver the order on 09.09.2024, if possible. If not, the said order shall be delivered within a period of one week from 09.09.2024 onwards. Learned JMFC shall pass a speaking order positively considering the fact that the Application for transfer of proceedings is being allowed by this order. It is clarified that the aforesaid order is passed only to transfer the DV Act proceedings to the Family Court No.5, Pune.

10. There is one more requisition made by the learned Advocate for Respondent stating that the parties have been in the litigious state for more than 9 years. He would submit that in order to relieve and ameliorate the anxiety of the parties, this Court be pleased to pass directions for expeditious hearing of the proceedings. That request from the learned Advocate for Respondent in the facts of the case

needs to be allowed and granted.

11. In view of my above observations and findings, MCA stands allowed in terms of prayer clause 'b' which reads thus:-

“(b) Criminal M. A. No. 586/2016 pending before the Learned Judicial Magistrate First Class Cantonment Pune kindly be transferred to Ld. Family Court No. 5, Pune.”

12. All contentions of the parties are expressly kept open before the Family Court No.5.

13. It is clarified that the transfer of the proceedings from the JMFC, Cantonment, Pune shall only take place as directed by this Court herein above after the speaking order is passed by the said Court in the Applicant which is posted for orders on 09.09.2024.

14. The learned Family Court No.5, Pune is directed by this Court to consider the evidence that is recorded as also interlocutory orders passed by JMFC, Cantonment, Pune in accordance with law. Learned Family Court No.5, Pune is directed to decide all proceedings as expeditiously as possible in any event within a period of six (6) months from today.

15. It is further clarified that once the order is passed by JMFC, Cantonment, Pune in the pending Application as directed herein above, the Court shall act on a server copy of this order and immediately transfer the proceedings to the Family Court No.5, Pune since the next

date in the Family Court at Pune is on 21.09.2024 and equally the Family Court No.5 is also directed to act on a server copy of this order and re-register the proceedings immediately.

16. Both the aforesaid Courts i.e. JMFC, Cantonment, Pune and Family Court No.5, Pune shall take cognizance of a server copy of this order and shall not insist on production of certified copy of this order.

17. With the above directions, MCA is allowed and disposed.

[MILIND N. JADHAV, J.]

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Date: 2024.09.06
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