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

MISC. CIVIL APPLICATION NO. 345 OF 2024

Mrs. Neelambari Abhijeet Desai	
Nee name Neelambari Bharat Jagtap	.. Applicant
Versus	
Mr. Abhijeet Ashok Desai	.. Respondent

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- Mr. Sumedh Modak a/w. Mr. Sarvesh Deshpande, Advocates i/by Mr. Mahendra Agvekar for Applicant.
 - Mr. Nitin Thakkar, Senior Advocate through VC a/w. Ms. Anita Castelino, Mr. Karan Gajra, Mr. Vijay Singh and Mr. Digvijay Kachare, Advocates i/by Daksha Punghera & Sanchita Sontakke for the Respondent.

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CORAM : MILIND N. JADHAV, J.

DATE : AUGUST 29, 2024.

P.C.:

- 1.** Heard Mr. Modak, learned Advocate for Applicant and Mr. Thakkar, learned Senior Advocate for Respondent.
- 2.** Present Misc. Civil Application (for short “MCA”) seeks transfer of Marriage Petition instituted by Respondent in the year 2016 in the Family Court at Bandra, Mumbai to the Family Court at Kolhapur, where the Applicant resides.
- 3.** The stage of trial in the Marriage Petition is that Respondent who is Petitioner therein is under cross-examination. The above timeline suggests that his Marriage Petition is 8 years old. Parties

agree that during the interregnum the Applicant travelled from Kolhapur to Mumbai for the dates of hearing. There is no dispute about this fact. Nevertheless, it would not preclude her to make an Application under Section 24 of the Code of Civil Procedure, 1908 (for short “CPC”) which the Applicant has now made enumerating the grounds of hardship. Applicant is also taking care of her 14 year old minor daughter who at the time of filing of the Marriage Petition would have been six years old.

4. The grounds of hardship are enumerated in the MCA. Though, today and presently I am not going into them, but for one reason which Mr. Thakkar, learned Senior Advocate appearing on behalf of the Respondent alongwith Ms. Castelino would persuade me to consider. He would submit that stage of Marriage Petition proceedings be considered before passing directions. He would submit that Respondent herein who is the Petitioner in the Marriage Petition is a practicing Advocate at the bar and in that view of the matter, it would be in the interest of justice if atleast his witness action is completed in the Marriage Petition in Mumbai, without elaborating on the reason as to why such an Application is made by Mr. Thakkar. I very well understand the reasons behind making such an Application as it would be in the interest of not only the Respondent but also in the interest of justice rather than require two different Courts to record the witness action. Therefore, before I delineate on any of the further

issues of hardship expressed by the Applicant qua the powers of this Court to allow such an Application under Section 24 of the CPC, I have put it across to Mr. Modak, learned Advocate for the Applicant that the Applicant's Advocate in the Family Court at Bandra should complete cross-examination of Respondent which is presently underway. I was informed across the bar that on the previous date before the Family Court, Bandra Respondent was cross-examined from 12:00 noon to 02:30 p.m. at one stretch and his cross-examination is still pending.

5. Mr. Modak would submit and inform the Court that a substantive Affidavit under Order XVIII Rule 4 of the CPC has been filed by the Respondent in his evidence running into 40 pages. Be that as it may, I am of the view that the submission made by Mr. Thakkar in the facts and circumstances of the present case, for the present, should be considered in the interest of justice.

6. Mr. Modak, learned Advocate would submit that he has taken instructions from Applicant and the Advocate for Applicant and he would abide by the directions passed by the Court regarding completing the cross-examination of the Respondent but with a Caveat. He would submit that as enumerated in the MCA grounds of hardship of the Applicant be considered and the MCA be transferred to the Family Court at Kolhapur thereafter for conduct of further proceedings. Undoubtedly, the grounds of hardship enumerated by

the Applicant shall be considered by this Court only and that too strictly in accordance with law as also the provisions of Section 24 of the CPC.

7. Further order shall be passed on 20th September 2024 since Mr. Thakkar persuades the Court to keep the matter on that date as he is in difficulty. That date is also suitable in so far as the present witness action of the Respondent is concerned since between 10th September 2024 and 20th September 2024, the learned Trial Court can attempt to complete the balance cross-examination of the Respondent.

8. Mr. Modak, learned Advocate would submit that the Advocate for the Applicant would endeavour to complete the cross-examination as far as possible during the above dates.

9. A server copy of this order shall be placed before the Trial Court by the Advocates for the parties on 31st August 2024 at 10:30 a.m. so that the Family Court at Bandra is apprised about this order and it is not taken by surprise on 10.09.2024 accordingly it will enable the Court to hear the matter. If the Trial Court feels that the matter can be preponed prior to 10.09.2024 on any working day, both the parties shall cooperate and they are agreeable to do so but it shall be entirely at the discretion of the learned Trial Court to do so.

10. The above order is passed only to ensure that the pending cross-examination of Respondent is completed so that this Court can

pass an appropriate order to transfer the MCA filed by Applicant on the next adjourned date after hearing the parties or otherwise in accordance with law. All contentions of both parties shall be considered by the Court in the MCA.

11. The learned Trial Court is requested by this Court to cooperate and comply with the aforesaid directions issued by the Court.

12. Stand over to **20th September 2024.**

[MILIND N. JADHAV, J.]

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