



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

12 MISC. CIVIL APPLICATION NO. 264 OF 2024

Shilpa Nikhil Sharma
VERSUS
Nikhil Kailash Sharma

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Ms.Rani Bharuka, Advocate for Applicant.

Mr. P. P. Uttarwar, Advocate for Respondent.

CORAM : KISHORE C. SANT, J.

DATE : 18th FEBRUARY 2025

PC :-

1. Heard the learned Advocate for the parties.
2. This application is filed seeking transfer of petition No.D-3/2023 pending before the learned Judge, Family Court at Nanded to the Court of learned Civil Judge, Senior Division, Barshi Dist. Solapur.
3. The applicant is the wife against whom the respondent-husband has filed the petition seeking permanent custody of children under Sections 7, 19(B) and 25 of the Guardians and Wards Act, 1890. It is the case of the applicant-wife that she is residing with her parents at Barshi Dist. Solapur whereas the husband has instituted the proceeding

in Nanded as presently the children are at Nanded. This application is filed merely on the ground that the applicant is residing at Barshi. The place away from Nanded. The other proceeding of Petition No. A-85 of 2022 filed in the Family Court at Nanded is already transferred to the Court of learned Civil Judge, Senior Division, Barshi. She has already filed petition at Barshi bearing Civil Misc. Application No.49 of 2022 under Section 8 of the Guardians and Wards Act for custody of children. There is one more proceeding filed bearing Criminal Misc. Application No.282 of 2022 which is already transferred from the Court at Nanded to the Court at Barshi and therefore, a request is made to transfer the proceeding from the Court of learned Judge, Family Court at Nanded to the Court of learned Civil Judge, Senior Division, Barshi Dist. Solapur.

4. Mr.Uttarwar, the learned Advocate for the respondent vehemently opposed the application. He invites attention to Section 9 of the Guardians and Wards Act, the jurisdiction is only with the Court where the children are residing and therefore, the proceeding cannot be transferred to any other Court. He further submits that as per the settlement between the parties, the wife frequently visits Nanded to

meet children. He thus, opposes the application on the other factual aspects as well.

5. Learned Advocate for the Applicant relied upon the Judgments passed by the Panjab and Haryana High Court in the cases of ***Harjeet Kaur Vs. Jatinder Singh***¹ and ***Anju Bala Vs. Mangat Rai Jindal***², wherein the proceedings are transferred to the place of convenience of the wife by considering the provisions of Section 9 of the Guardians and Wards Act as well as Section 24 of the Code of Civil Procedure.

6. The learned Advocate for the respondent relied on the order passed by the Hon'ble Apex Court in the case of ***Subhashini Mohan Vs. Nagendran Paulraj*** decided on 31st January 2024 in Transfer Petition (Civil) Nos.3066-3067/2023. In the said case, the proceeding under Hindu Marriage Act was transferred. However, the transfer petition pertaining to custody of girl child was dismissed.

7. Having considered the submissions and the judgments and order, this Court finds that the judgments in the case of ***Harjeet Kaur*** (supra) and ***Anju Bala*** (supra) are clearly applicable. So far as the order passed

1 MANU/PH/3222/2023

2 MANU/2579/2024

by the Hon'ble Apex Court in Transfer Petition Nos.3066-3067/2023, this Court finds that the provisions of section 24 of C.P.C. were not before the Hon'ble Apex Court. The petitioner could not point out the fact were similar to the facts of this case. As it is, one proceeding in respect of child custody is filed and pending in the Court at Barshi. This factor also needs to be taken into consideration to avoid conflicts in judgment in the matter of custody. It is always better to both the proceedings are decided by the same Court.

8. In view of the same, this court is inclined to allow the application in terms of prayer clause (b).

9. After the proceeding is transferred, the learned Judge shall try to dispose of the proceeding as early as possible and preferably within eighteen (18) months from the date of transfer of the proceeding.

10. The applicant-wife shall co-operate in speedy disposal of the proceedings without seeking unnecessary adjournments. If the Court finds that unnecessary adjournments are sought by the applicant-wife, the Court shall deal with it to compensate the respondent.

11. Whenever possible, the respondent-husband be allowed to appear through Video Conferencing.

12. With this, Application stands disposed off.

[KISHORE C. SANT, J.]