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IN THE HIGH COURT OF BOMBAY AT GOA
TRANSFER APPLICATION NO.3 OF 2025

1. MRS. NASRIN SALIM BIRAL

R/o. 72, Near Holy Cross, Sasmollem
Baina, Mormugao, 37 years, Vasco – ... PETITIONER/
Da- Gama, Goa 403802 APPLICANT

Versus

1. MR. SALIM MURTUZA BIRAL,

38 years, R/o. B-30/15, Upper ... RESPONDENT
Indiranagar, Bibewadi- Pune 411 037

Ms. Neha Shirodkar, Advocate under Legal Aid Scheme for the Applicant.

CORAM : VALMIKI MENEZES, J.

RESERVED ON : 28th MAY 2025

PRONOUNCED ON : 01st JULY, 2025

ORDER:

1. Registry to waive office objections and register the matter.

2. Heard Ms. Neha Shirodkar appearing for the Applicant under the Legal Aid Scheme. Though the Respondent has been served, he has not put in appearance in person or through Counsel. Vide email dated 03.04.2025, the Respondent has raised objections to this transfer application on the ground that he has no financial means to regularly travel to Goa to pursue his case, if transferred.

3. This is an application filed by the Applicant-wife seeking transfer of Matrimonial Petition No.A/590/2023, seeking restitution of conjugal rights under Mohammedan Law, filed by Respondent-husband, pending before the Family Court at Pune, to the Court of Civil Judge Senior Division at Vasco Da Gama, Goa.

4. Ms. Neha Shirodkar submits that the Applicant-wife instituted proceedings under the Protection of Women from Domestic Violence Act, 2005, on 19.01.2023, before the Court of the Judicial Magistrate First Class, Vasco, under the case number C.C. No. DVA/02/2023/B. It is further submitted that subsequent to the initiation of the Domestic Violence proceedings in Goa, the Respondent-husband filed Matrimonial Petition No. A/590/2023 seeking restitution of conjugal rights under Mohammedan Law before the Family Court, Pune, on 18.03.2023.

5. It is the case of the Applicant-wife that she has been residing with her parents in Vasco da Gama, Goa since the birth of her son in June 2020, and she has been solely responsible for the care and upbringing of the said child. The child, aged about 4years, is presently enrolled in a Balwadi in Vasco. It is further stated that the Applicant-wife is engaged in tailoring, earning a modest monthly income of approximately Rs. 6000/-. Additionally, it is contended that the Applicant-wife, along with her son, currently resides with her mother, who is the sole surviving parent of the Applicant-wife and is a senior citizen suffering from various health issues.

6. It is further submitted that pursuant to the order of the Court dated 31.01.2024 in the Domestic Violence proceedings, the Petitioner-wife was granted a monthly maintenance amount of Rs. 10,000/-, which the Respondent has failed to remit, flouting the Court's directions. It is submitted that the Applicant's and her minor child's medical expenses, along with costs for food and clothing, amount to approximately Rs. 20,000/-. In light of the Respondent-husband's continued non-compliance with the maintenance order, it is submitted that the Applicant-wife will face significant financial hardship in meeting the expenses of litigation, travel to Pune, and arrangements for child care. Furthermore, apprehensions are expressed regarding the Applicant's safety,

citing a history of incidents of harassment by the Respondent and/or his family.

7. The Advocate for the Applicant relies on the following judgments in support of her submissions;

- i. ***Vaishali Shirdhar Jagtap v. Shirdahar Vishwanath Jagtap***, (2016) 14 SCC 356.
- ii. ***N. C. V. Aishwariya v. A. S. Sarvana Karthik Sha***, 2022 SCC OnLine SC 1199.
- iii. ***Ruchi Rawat v. PDJ, Family Court Etah & Anr.***, C. A. No. 5218 of 2022, (The Supreme Court of India)
- iv. ***Trishala Vaibhav Jain v. Vaibhav Manoj Jain***, 2023 SCC OnLine Bom 1793.
- v. ***Reshma Shivraj Bhosle v. Shivraj Bapusaheb Bhosle***, 2023 SCC OnLine Bom 2838.
- vi. ***Mrs. Harshada Omkar Dhaiwadikar v. Mr. Omkar Sanad Dhaiwadikar***, MCA No. 171 of 2022, (The High Court of Judicature at Bombay, Civil Appellate Jurisdiction).
- vii. ***Smt. Irene Blanch Khera v. Shri Glenn John Vijay***, (2018) 6 Mah L. J. 199

8. The Respondent-husband, vide email dated 03.04.2025, with the subject line “Application on behalf of Respondent in the instant case of Transfer Application (F) No. 2851/2025 Nasrin Salim Biral v. Salim Murtuza Biral”, bearing inward No. HCB/GOA/RJ/Email/Inward/268 dated 04.04.2025, has furnished a response to this Court’s order dated 26.03.2025. The said order directed the Applicant-wife to serve a notice upon the Respondent-husband and the Advocate representing him before the Family Court at Pune, informing them that the pending application for transfer was scheduled for hearing on 04.04.2025, for final adjudication by this Court.

9. The Respondent, in his aforementioned email, has objected to the transfer application, citing financial constraints on his part to engage an Advocate to represent him before the Family Court at Goa. Additionally, he has stated that he does not oppose the Applicant-Wife appearing through video conferencing before the Family Court at Pune.

10. The Respondent-Husband has not filed any counter affidavit or denied the grounds for transfer cited in this application. ***Irene Blanch*** (supra) affirms that this Court has the jurisdiction to hear the present application and to effect the transfer of proceedings

from Family Court, Pune to the appropriate court in Goa. The relevant paragraphs are quoted below:

“14] After Goa became a State on 30th May, 1987 on coming into force of the Goa, Daman and Diu Reorganization Act, 1987, this Court became a common High Court for the State of Maharashtra and the State of Goa Section 20 of the said Act lays down that;

"Section 20: Common High Court for Maharashtra, Goa, Dadra and Nagar Haveli and Daman and Diu -

(1) On and from the appointed day,

(a) there shall be a common High Court for the States of Maharashtra and Goa, and for the Union territories of Dadra and Nagar Haveli, and Daman and Diu, to be called the High Court of Bombay (hereinafter referred to as the common High Court):

(b) the Judges of the High Court of Bombay (hereinafter referred to as the existing High Court), holding office immediately before that day shall, unless they have elected otherwise, become, on that day, the Judges of the common High Court.

(2) The expenditure in respect of the salaries and allowances of the Judges of the common High Court shall be allocated amongst the State of Maharashtra and Goa and the Union in such

proportion as the President may, by order, determine.

(3) On and from the appointed day, the common High Court shall have, in respect of the territories comprised in the State of Maharashtra and Goa and the Union territories of Dadra and Nagar Haveli and Daman and Diu, all such jurisdiction, powers and authority as, under the law in force immediately before the appointed day, are exercisable in respect of those territories by the High Court of Bombay."

15] Section 26 of the said Act then provides that the Principal Seat of the common High Court shall be at the same place at which the Principal Seat of the existing High Court is located immediately before the appointed day. Therefore, what was earlier Bench of this Court at Panaji, Goa, it became now the Principal Seat of the common High Court for the State of Goa.

16] The question, whether it has changed the position as such in respect of exercise of the jurisdiction by the Principal Beat at Goa for the State of Goa and the Principal Seat at Mumbai for the State of Maharashtra came for consideration before the Full Bench of this Court in the case of Edward Evan Pereira and Anr. V/s. Goncalo Jose Agnelo and Anr' wherein, in the light of the issues raised before it and after considering the

provisions of Section 3 of the High Court at Bombay (Extension of Jurisdiction to Goa, Daman and Diu) Act, 1981, It was held that by virtue of this provision, the jurisdiction of the High Court at Bombay, including even the jurisdiction under the Letters Patent, was extended to the Union Territory of Goa, Daman and Diu. It was further held that by virtue of the provisions of Section 20, 25 and 27 of the said Act, the High Court of Bombay being the common High Court for the State of Maharashtra and the State of Goa, the same jurisdiction, including the jurisdiction under the Letter Patent, is exercisable by the High Court of Bombay sitting at Panaji, Goa, which is exercisable by the High Court of Bombay at its Principal Seat at Bombay and its Benches at Nagpur and Aurangabad.

17] This judgment, thus, makes it clear that the High Court of Bombay, being a common High Court for the State of Maharashtra and the State of Goa, the same jurisdiction including the jurisdiction under the Letters Patent is exercisable by the High Court of Bombay sitting at Panaji (Goa), which is exercisable by the High Court of Bombay at Its Principal Seat at Bombay and its Benches at Nagpur and Aurangabad. Therefore, if the Principal Seat of the High Court at Bombay can transfer the proceedings pending in the judicial Districts in exclusive jurisdiction of its Benches at Aurangabad or Nagpur, then it follows that the Principal Seat of High Court at Bombay can also

transfer the proceedings which are lying within the exclusive jurisdiction of its Seat at Goa, as both the Courts viz. the Court in which proceedings are pending and the Court to which the proceedings are to be transferred are subordinate to the common High Court. The provisions of Section 20 of the Goa, Daman and Diu Reorganization Act, 1987 are clear to the effect that the High Court of Bombay is the common to both the State of Maharashtra and the State of Goa. Hence, there cannot be any distinction in exercise of jurisdiction in respect of the proceedings lying in the territories within the jurisdiction of the Principal Seat at Bombay and the proceedings lying in the exclusive jurisdiction of its Seat at Goa.”

11. It is well settled that whilst deciding an application for transfer of matrimonial proceedings, the financial capacity and social strata to which the parties belong has to be accorded due consideration and that, given the prevailing socioeconomic paradigm in the Indian society, it is generally the wife’s convenience which would be the deciding factor in such matters. This principle has been reiterated in ***Trishala*** (supra), ***Aishwarya*** (supra), ***Reshma*** (supra), ***Harshada*** (supra), ***Vaishali*** (supra) and ***Ruchi*** (supra). The relevant paragraph from ***Aishwarya*** (supra) is as quoted below:

“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 Courts 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 socio-economic paradigm in the Indian society, generally, it is the wife's convenience which must be looked at while considering transfer.”

12. The Applicant-wife has been incurring the expenses of herself and her child from a monthly income of approximately Rs.6000/-. The Applicant currently resides with her mother, a senior citizen and her sole surviving parent. From the uncontroverted averments as to her financial status, the Applicant does not possess the financial capacity to bear the costs associated with the litigation at Pune, including costs of travel, accommodation in Pune, and legal Counsel, which would impose a significant financial burden on her. Furthermore, it cannot be reasonably expected that her family would bear the financial

responsibility for the expenses related to such litigation in Pune. Taking these circumstances into account, it is evident that continuing the proceedings in the said matrimonial petition at Pune would result in undue hardship and inconvenience to the Applicant-wife in the present matter.

13. In the view of the above considerations, the application is allowed. I hereby direct that the Matrimonial Petition No. A/590/2023 pending before the Family Court at Pune be transferred to the Court of Civil Judge Senior Division 'B' Court at Vasco Da Gama, Goa, before whom the DV proceeding DVA/02/2023 is pending (this Civil Court also acts as the JMFC for DV Matters). Accordingly, the presiding officer of the Family Court- 2 at Pune dealing with Matrimonial Petition No. A/590/2023 shall remit/transfer the entire case papers of this case to the Court of the Civil Judge Senior Division 'A' Court at Vasco Da Gama, Goa within 15 days from receipt of the writ of this Order. The parties shall appear before the Civil Judge Senior Division 'A' Court at Vasco Da Gama, Goa on 22.07.2025 at 10:00 AM. The Presiding Officer of the Civil Judge Senior Division 'A' Court at Vasco Da Gama, Goa shall, on receipt of the file from the Pune Court, register the same and hear the case in accordance with law.

14. The Civil Judge at Vasco Da Gama may grant the Respondent-husband leave to appear before it through video conferencing.

VALMIKI MENEZES,J.