IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/MISC. CIVIL APPLICATION (FOR TRANSFER) NO. 1673 of 2025

With
R/MISC. CIVIL APPLICATION NO. 1675 of 2025

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE MAULIK J.SHELAT

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Approved for Reporting Yes No

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[redacted]

Versus

[redacted]

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Appearance:
MS DIPMALA S DESAI(6596) for the Applicant(s) No. 1
MR MANISH S SHAH(5859) for the Opponent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE MAULIK J.SHELAT**

Date : 16/10/2026

COMMON JUDGMENT

1. Heard Ms. Dipmala S. Desai, learned advocate for the applicant and Mr. Manish S. Shah, learned advocate for the opponent.

2. Since the issue germane to both these applications is common, with the consent of learned advocates for the respective parties, both these applications are heard together and decided by way of this common judgment.

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3. The applicant happens to be wife of the opponent who filed an application under Section 7 read with Section 25 of the Guardians and Wards Act, 1890 (herein after referred to as " the Act, 1890") against the opponent before the Family Court, Himmatnagar. Whereas the opponent has also instituted a family suit under Section 13 of the Hindu Marriage Act, 1955 against the applicant at Family Court, Himmatnagar. Since the applicant is residing along with her parents at Rajkot, she has approached this Court by way of this application filed under Section 24 of CPC to transfer the aforesaid proceeding from Family Court, Himmatnagar to Family Court, Rajkot.

4. Ms. Desai, learned advocate, appearing for the applicant, would submit that the applicant is an illiterate lady who is residing far away from her children and to get custody of her children who are currently possessed by the opponent/husband – father, she has instituted proceedings under the Act, 1890 at Family Court, Himmatnagar. It is submitted that the opponent instituted

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adverse proceeding before the Family Court, Himmatnagar and considering the distance between Himmatnagar and Rajkot which is around 300kms, it causes great hardship and inconvenience to the applicant to attend the proceeding instituted by the opponent.

4.1. It is further submitted that the applicant has also instituted maintenance proceeding under Section 125 of Cr.P.C., Domestic Violence complaint against the opponent which are pending before the concerned Court at Rajkot and there is an FIR filed against the opponent under Section 498A pending before the competent Court at Rajkot.

4.2. Making the above submissions, Ms. Desai, learned advocate, would request this Court to consider the relief prayed by the applicant in these applications.

5. *Per contra*, Mr. Shah, learned advocate, appearing for the opponent, has vehemently opposed these applications contending *inter alia* that since the applicant herself instituted a proceeding under the Act, 1890 at

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Family Court in Himmatnagar and such the proceeding is required to be attended by the applicant, there is no purpose served to transfer the proceeding instituted by the opponent from Family Court, Himmatnagar to Family Court, Rajkot. It is submitted that the applicant can very well attend both these proceedings through video conference which is available. It is further submitted that the opponent is also ready to pay reasonable travelling expenses to the applicant if she is personally required to travel to attend the proceeding instituted by the opponent.

5.1. Making the above submissions, Mr. Shah, learned advocate, would request this Court to reject these applications.

6. No other and further submissions have been advanced by learned advocates for the respective parties.

7. Having heard learned Counsels for the respective parties and considering the aforesaid peculiar facts and circumstances of the case, it appears that the applicant

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herself instituted proceeding under the Act, 1890 before the Family Court, Himmatnagar and such proceeding is required to be attended by her. It is not disputed by Ms. Desai, learned advocate for the applicant, as per the provisions of the Act, 1890, the applications seeking custody is required to be filed before the Court where the children are residing, i.e., Family Court, Himmatnagar.

8. If such would be the case, according to my view, the proceeding instituted by the applicant under the provisions of the Act, 1890 cannot be transferred from Family Court, Himmatnagar to Family Court, Rajkot, which has no jurisdiction to decide the *lis* between the parties. Apart from the aforesaid dispute between the parties, so far as the welfare of child is concerned, it is always a paramount consideration for any Court.

9. Since the application was instituted by the applicant under the Act, 1890 and to adjudicate such application, the Court concerned who has jurisdiction is required to interact with the child before passing any order, it is more desirable that it should be heard and adjudicated by the

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Court within whose jurisdiction the children are residing, i.e., Family Court, Himmatnagar. Moreover, as per Section 24(5) of CPC also, this Court cannot transfer the application instituted by the applicant to Family Court Rajkot as prayed for. Once the application instituted by the applicant before the Family Court, Himmatnagar is not transferred to Family Court Rajkot, the applicant is required to attend such proceeding before the Family Court Himmatnagar, then no purpose will be served by transferring the suit proceeding instituted by the opponent against the applicant, which is otherwise pending before the Family Court Himmatnagar. Rather both the proceedings can be ordered to be heard and decided by the same Family Judge at the earliest.

10. As far as the travelling expenses is concerned, Mr. Shah, learned advocate for the opponent, under the instruction of his client, would state that in a case where the applicant personally attends the proceeding before the Family Court, Himmatnagar, on such occasion, the opponent will pay the travelling expenses of Rs. 1,500/- to

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the applicant. According to me, it would be reasonable for the applicant to meet with her travelling expenses to attend the proceedings.

11. In view of the aforesaid discussion and reasons, I am not inclined to accept the prayer made by the applicant. Nonetheless it is hereby observed that the Principal Judge of Family Court may see to it that CMA-DC (Civil Miscellaneous Application – District Court) No. 7 of 2024 filed by the applicant under Section 7 read with Section 25 of the Act, 1890 and Family Suit No. 102 of 2024 instituted by the opponent shall be heard and decided by one Family Court, Himmatnagar. The Court concerned is hereby requested to give a common date in both the proceedings, whereby the applicant can attend both the proceedings on the same day.

12. It is open for the applicant to request the Court concerned to allow her to attend both the proceedings through video conference. As and when such request will be made, the same shall be accepted by the Family Court

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concerned, unless her physical presence is required for her cross-examination or otherwise.

13. In view of the aforesaid facts and circumstances, having not found any merit in the application, both these applications are rejected. Subject to extending the cooperation and support by the parties, the Family Court Himmatnagar is requested to expedite both the proceedings and may decide it in accordance with law as early as possible preferably within one year from the date of receipt of copy of this order. Rule is discharged. No order as to costs.

(MAULIK J.SHELAT,J)

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