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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

MISCELLANEOUS CIVIL APPLICATION NO.52 OF 2015

Abhijit Prabhakar Pathak
Age - 34 years, Occ - NIL
R/o Parvati Madhav Pradhan Nagar,
Behind Mhasoba Mandir,
Nashik Road, Nashik

APPLICANT

VERSUS

1. Vaishali Abhijit Pathak
Age - 30 years, Occ - Service,
R/o Flat No.1, Sairam Apartment,
Ganesh Baba Nagar,
Behind Sidharh Hotel, Nashik-Pune Road,
Dwarka Nashik 422 001
2. Aditya Abhijit Pathak,
Age- 5 years,
u/g of respondent No.1

RESPONDENTS

.....
Mr. S. D. Hiwrekar, Advocate for the applicant
.....

[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 14th DECEMBER, 2015

ORAL JUDGMENT :

1. In spite of service of notice intimating that the matter being likely to be taken up for final disposal at the admission stage, no appearance has been caused on behalf of the respondents.
2. Rule. Rule made returnable forthwith. Heard learned advocate for the applicant finally.

3. After hearing learned advocate for the applicant, an indisputable position arises that after having got married in May, 2005, respondent No.1 appears to have left matrimonial house around October, 2006, along with child and since then has been staying in Nashik city.

4. After leaving the applicant, it appears, respondent No.1 had approached Judicial Magistrate First Class, Dhule by filing Criminal Miscellaneous Application No.397 of 2008 for maintenance under section 125 of the Criminal Procedure Code. Thereafter, respondent No.1 has filed HMP No.250 of 2008 for restoration of conjugal rights at Dhule. The same, according to the applicant, has been filed at Dhule with a view to harass the applicant.

5. Aforesaid intention, according to learned advocate for the applicant, clearly emerges from that, all the parties reside in and around Nashik. For about three proceedings, after HMP No.250 of 2008 had been lodged at Dhule, have been filed one after the other. In 2008, the applicant had lodged divorce petition bearing HMP No.152 of 2010 (Old No.27 of 2008) at Nashik, wherein respondent No.1 has been causing her appearance. In 2011, Criminal Application No.567 of 2011 has been filed by respondent No.1 at Nashik for recovery of arrears of maintenance. In 2012, respondent No.1 had lodged yet another Criminal Miscellaneous

Application No.160 of 2012 seeking recovery of arrears of maintenance at Nashik. The applicant has also moved an Criminal Appeal No.85 of 2013 seeking custody of son, which is pending at Nashik. There is one more proceeding pending traceable to the matrimonial relationship between the applicant and respondent No.1 bearing RCC No.64 of 2012 at Nashik.

6. In the circumstances, it has been urged that the solitary proceedings at Dhule be transferred to court at Nashik. Learned advocate also points out that it is difficult to bear not only passage from Nashik to Dhule on various dates, but even economically and further that respondent No.1 has not been attending to the dates in said proceeding at Dhule.

7. All aforesaid facts, circumstances and events in the absence of the respondents go undisputed. Absence of the respondents, in the circumstances, appears to be tacit acceptance of the request made under the application.

8. As such, Miscellaneous Civil Application is allowed in terms of prayer clause "B" and stands disposed of.

[SUNIL P. DESHMUKH, J.]