

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

MISCELLANEOUS CIVIL APPLICATION NO.99 OF 2014

Sou. Akshata Harshad Khairmode .. Applicant

Vs.

Shri Harshad Anand Khairmode .. Respondent

Mr. R.V.Bansode for the applicant

Mr. Rupesh P. Bhalshankar for the respondent

**CORAM : K.K.TATED, J.
DATED : 09/10/2015**

PC:

1 Heard the learned counsel for the parties.

2 This application is preferred by wife under Section 24 of Code of Civil Procedure, 1908 for transfer of divorce petition filed by the respondent husband bearing No.A-2130 of 2013 under Section 13(1)(i-a)(i-b) of the Hindu Marriage Act, 1955 in the Family Court at Bandra, Mumbai to Civil Judge, Senior Division, Barshi, Tal.Barshi, Dist.Solapur for hearing and final disposal on its own merits.

3 The learned counsel for the applicant submits that at present applicant wife is residing at Kurduwadi, Bypass Road, Tukaram Nagar, Tal. Madha, Dist. Solapur. He submits that the distance between her

residence to Mumbai is more than 400 kms. He submits that applicant is housewife. She does not have any source of income. She is residing with her parents. He submits that her parents are old aged persons. So also, father of the applicant is 60% handicapped, as he faced paralysis while he was in service and now he is retired. Hence, it is very difficult for the applicant to travel from Kurduwadi to Mumbai for attending each and every date of Divorce petition filed by respondent husband. He further submits that initially the applicant wife filed Criminal Case No.10/PW/2011 under section 498A of the Indian Penal Code before the learned 32 Metropolitan Magistrate Court at Bandra (East), Mumbai. He submits that as the applicant started staying with her parents at Kurduwadi, she filed Misc. Criminal Application No.40 of 2013 in this court for transfer of the said criminal application from Bandra, Mumbai to the learned J.M.F.C. Madha, Tal.Madha, Dist Solapur. He submits that, that application was allowed by this court by order dated 1.7.2013. He submits that thereafter the respondent husband filed the present Divorce Petition in the Family Court at Bandra, Mumbai on 7.8.2013. He submits that though the respondent had knowledge that the criminal complaint filed by her was transferred from Mumbai to Madha court on the ground that applicant started residing at Kurduwadi, Dist Solapur, respondent filed Divorce Petition at Bandra to harass her. The learned counsel for the applicant, across the bar makes a statement that applicant wife filed application for setting aside no written statement order. He submits that Family Court at Bandra has not decided the said application on its own merits. He submits that in the interest of justice, Divorce Petition filed by respondent husband at Bandra, Mumbai be transferred to Civil Judge, Senior Division, Barshi, Tal.Barshi, Solapur for hearing and final

disposal on its own merits. He submits that if application is not allowed, irreparable loss will be caused to the applicant.

4 On the other hand, the learned counsel for the respondent husband vehemently opposed the present application. He filed affidavit dated 31.7.2014 for opposing the present application for transfer. The learned counsel for the respondent submits that in the Divorce Petition, applicant failed and neglected to file her written statement. Hence, the Family Court at Bandra, Mumbai passed order on 4.4.2014 to proceed the petition without written statement. He submits that these facts are not disclosed by the applicant by filing additional affidavit in support of the present Misc. Civil Application. He further submits that the Family Court at Bandra passed order on 8.5.2014 and matter was adjourned to 7.6.2014 for judgment/order. In support of this contention, advocate for the respondent relies on the roznama in Divorce Petition dated 8.5.2014. He submits that matter is pending before the Family Court at Bandra for judgment. It is just pending because this court passed ad-interim stay in terms of prayer clause (b) of the Misc.Application on 8.5.2014. The learned counsel for the respondent husband across the bar made a statement that till today the applicant wife has not filed any application for setting aside no written statement order. Statement is accepted. In support of this contention, the learned counsel for the respondent relies on paragraph 12 of his Affidavit-in-Reply dated 31.7.2014 which reads thus:

“12) That, the Family Court's Divorce Petition is posted for the “Final Judgment”, hence cannot be transferred.”

5 The learned counsel for the respondent husband submits that as the matter is kept for judgment/order this court should not entertain the present application filed by applicant wife under section 24 of the Code of Civil Procedure, 1908 for transfer of matter from one place to another place. He submits that at this stage if application is allowed, irreparable loss will be caused to the respondent husband. Hence, Misc. Civil Application filed by applicant wife be dismissed with costs.

6 I have heard both the sides at length.

7 In the present proceeding, the Divorce Petition filed by respondent husband is kept for judgment/order by the Family Court as per roznama dated 8.5.2014. Apart from that, till today the applicant wife has not filed any application before the Family Court at Bandra for setting aside no written statement order and or permission to file written statement. This itself shows that the applicant wife has conducted Divorce Petition in casual manner.

8 Considering the fact that matter is kept for judgment/order, I do not find any reason to entertain the present application filed by wife under section 24 of the Code of Civil Procedure, 1908 for transfer of Divorce Petition from one place to another. Hence, following order is passed:

- a) Misc. Civil Application filed by applicant wife under section 24 of the Code of Civil Procedure, 1908 for transfer of Divorce Petition bearing No.213/2013 filed by respondent husband Harshad Anand Khairmode in the Family Court

Bandra, Mumbai to Civil Judge, Senior Division, Barshi, Tal.
Barshi, Dist. Solapur stands rejected.

b) No order as to costs.

(K.K.TATED, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed order.