

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

MISC. CIVIL APPLICATION NO.30/2014

Sou. Amruta Chandan Vibhute

...Applicant

V/s.

Chandan Gajanan Vibhute

...Respondent

Mr. R. S. Alange for the Applicant.

Mr. E. R. Naik for the Respondent.

**CORAM: K.K. TATED, J.**  
**DATED : OCTOBER 8, 2015**

**PC. :**

1. Heard the learned counsel for the parties. This Application is made by wife under section 24 of the Code of Civil Procedure, 1908 for transfer of divorce petition No.A-2162/2013 filed by Respondent husband under section 13(1)(ia) of the Hindu Marriage Act 1955 in the Family Court at Bandra, Mumbai to Family Court at Solapur.

2. The learned counsel for the Applicant submits that the Respondent husband filed petition for divorce on 17/08/2013. Thereafter the Applicant filed Criminal Misc. Application No.1255/2013 under sections 12, 17, 18, 19, 20 and 22 of the Protection of Women from Domestic Violence Act, 2005 before the Judicial Magistrate, First Class-1, Solapur. He further submits that the Applicant also filed petition under section 9 of the Hindu Marriage Act, 1955 bearing Application No.3/2014 in the Family Court at Solapur for

restitution of conjugal rights. He submits that these two proceedings filed by the wife are pending at Solapur for hearing and final disposal on merit.

3. The learned counsel for the Applicant submits that the Applicant being lady, it is very difficult for her to travel from Solapur and attend the court proceedings at Mumbai. He further submits that the Applicant is unable to travel to Mumbai alone and also she is financially depend on her parents. He submits that the journey time from Solapur to Mumbai is 8 hours. He submits that the distance between Solapur and Mumbai is more than 450 km. one way. At present the Applicant has no source of income. Therefore, it is very difficult for her to bear these expenses. He submits that in the interest of justice, this Hon'ble Court be pleased to transfer the divorce petition from Bandra, Mumbai to Solapur for hearing and final disposal on merits. He submits that if the Application is not allowed, irreparable loss and injury will be caused to the Applicant.

4. On the other hand, the Respondent husband vehemently opposed the Application. He filed Affidavit-in-Reply dated 10/11/2014. The learned counsel for the Respondent submits that the Applicant filed criminal Application under Protection of Women from Domestic Violence Act, 2005 and petition under section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights subsequent to the divorce petition filed by the Respondent. He submits that the Applicant can travel from Solapur to Mumbai. He submits that transport facility from Solapur to Mumbai is available by road as well as by train. He

submits that the journey time is not more than 5-6 hours. He submits that the Apex Court in the matter of ***Jitendra Singh Vs. Bhanu Kumari & Ors. 2009(3) Mh.L.J. 77*** held that at the time of deciding the Application under section 24 of the Code of Civil Procedure, 1908 for transfer of a matter from one place to other, the court must act judicially and consider the facts of both sides. On the basis of this submission and the law declared by the Apex Court, the learned counsel for the Respondent submits that there is no substance in the Civil Application. Same be dismissed with costs.

5. Heard the learned counsel for the parties. It is to be noted that in the present proceedings the distance between Solapur to Mumbai is 450 km one way. One has to travel overnight between these two stations. Apart from that, 2 proceedings have been filed by wife under Protection of Women from Domestic Violence Act, 2005 and under section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights at Solapur.

6. The Apex Court in the matter of ***Pratibha Khema Vs. Sanjay Kumar Khemka 2005(2) LJ Soft SC 19*** held that the convenience of a lady to be given priority at the time of deciding the Application for transfer of matrimonial petition from one place to another. Similar view was taken by the Apex Court in the matter of ***Rajani Kishor Pardeshi Vs. Kishor babulal Pardeshi 2005 (12) SCC 237***. Even in the authority cited by the advocate for the Respondent in the matter of *Jitendra Singh (supra)*, the Apex Court specifically stated that considering the facts and circumstances of the case, the court should

decide the Application under section 24 of the Code of Civil Procedure, 1908.

7. Considering the fact that the distance between Solapur and Mumbai is more than 450 km. one way, one has to travel overnight to reach Mumbai from Solapur, two proceedings have been filed by wife at Solapur which are pending for hearing and final disposal and the law declared by the Apex Court, I am satisfied that the Applicant has made out a case for allowing the Civil Application.

8. Hence, the following order is passed:

- a. Office of Family Court at Bandra, Mumbai is directed to transfer the petition No.A-2162/2013 filed by the Respondent Chandan Gajanan Vibhute under section 13(1)(ia) of the Hindu Marriage Act, 1955 to the Family Court at Solapur for hearing and final disposal on merits.
- b. Misc. Civil Application stands disposed off accordingly.

**(K.K. TATED, J.)**

**CERTIFICATE**

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