

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

MISCELLANEOUS CIVIL APPLICATION NO.72 OF 2015

Mrs.Yogini Prashant Mimgulkar .. Applicant

Vs.

Mr.Prashant Vasant Nimgulkar .. Respondent

Mr.Prashant Daulatrao Patil for the applicant

Mrs.A.S.Malvankar for the respondent

**CORAM : K.K.TATED, J.
DATED : 28/08/2015**

PC:

- 1 Heard the learned counsel for the parties.
- 2 This application is filed by wife for transfer of Marriage Petition A -2506 of 2014 filed by the respondent husband before the Family Court at Bandra to the Civil Judge, Senior Division at Kopergaon.
- 3 The learned counsel for the applicant submits that applicant is household wife. He submits that she is residing at Kopergaon along with her mother who is Senior Citizen. She does not have any source of income. He submits that it is very difficult for the applicant to travel from Kopergaon to Mumbai for attending each and every date of hearing. He submits that the distance between Kopergaon to Mumbai is more than 300 kms. one way. He further submits that there is no

direct transport facility (bus or train) available between Kopergaon and Mumbai. He further submits that it is not possible for the applicant's mother to accompany her on each and every date to attend the matter at Mumbai. He submits that in the interest of Justice, this Hon'ble Court be pleased to transfer the Marriage Petition filed by respondent husband to Kopergaon for hearing and final disposal on its own merits.

4 On the other hand, the learned counsel the respondent husband vehemently opposed the present application. Respondent filed Affidavit in reply dated 14.6.2015 to oppose the present application. Advocate for the respondent submits that the applicant failed and neglected to attend the Family Court at Bandra on several occasions. She submits that the Family Court at Bandra already passed order for no written statement. She submits that the respondent husband filed his affidavit of evidence and the matter is kept for cross-examination. She submits that if at this stage the matter is transferred to Kopergaon, there may be delay in deciding the same. Hence, in the interest of Justice, this Hon'ble Court be pleased to reject the application filed by applicant wife under section 24 of the Civil Procedure Code, 1908 for transfer of Divorce Petition from Mumbai to Kopergaon.

5 I have heard both the sides. It is to be noted that the applicant wife is residing at Kopergaon with her mother who is Senior Citizen. Applicant does not have any source of income. Not only that there is no direct transfer facility available from Kopergaon to Mumbai. The distance between Kopergaon to Mumbai is more than 300 kms. one way. To attend the matter at Bandra, applicant has to travel over-night from Kopergaon to Mumbai.

6 The Apex Court, further 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 divorce petition from one place to another place. Similar view has been taken by our High Court in the matter of **Saw.Megha vs. Madan, 2013 (4) BCR 211.**

7 Considering the submissions made by the learned counsel for the applicant, the averments made in Civil Application and the law laid down by the Apex Court and our High Court as stated hereinabove, I am of the opinion that applicant has made out a case for allowing this Miscellaneous Civil Application. Hence, following order is passed:

a) Miscellaneous Civil Application No.72 of 2015 is allowed in terms of prayer clause (b) which reads thus:

“(b) This Hon'ble Court be pleased to transfer the Marriage Petition No.A-2056 of 2014 pending before the Hon'ble Family Court, Bandra between Prashant Vasant Nimbgulkar versus Yogini Prashant Nimbgulkar to the Civil Judge, Senior Division, Kopergaon.”

b) Hearing of Divorce Petition filed by husband is expedited.

c) This court expects that Trial Court at Kopergaon to decide the the matter as early as possible but in any case within six months from the receipt of papers to that court.

- d) Application is allowed accordingly.

(K.K.TATED, J.)