

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

MISC. CIVIL APPLICATION NO.119/2015

Sou. Rupali Ramdas Aatar ...Applicant

V/s.

Shri Ramdas Ajinath Aatar ...Respondent

Mr. S. S. Choudhari for the Applicant.

CORAM: K.K. TATED, J.
DATED : AUGUST 25, 2015

PC. :

1. Heard the learned counsel for the Applicant. None for the Respondent though duly served.
2. This court, by order dated 16/04/2015 issued notice to the Respondent indicating, if time permits, matter would be decided finally at the stage of admission itself. Hence, the Application is taken up for final hearing.
3. This Application is filed by wife under section 24 of the Code of Civil Procedure, 1908 for transfer of petition filed by Respondent husband under section 9 of the Hindu Marriage Act, 1956 (the said Act) for restitution of conjugal rights bearing HMP No.105/2014 from Civil Judge, Senior Division, Srigonda, Dist. Ahmednagar to Civil Judge, Senior Division, Barshi, Dist. Solapur.

4. The learned counsel for the Applicant submits that initially, the Applicant wife filed a private complaint No.337/2013 before the learned Magistrate, Barshi under section 498-A, 323, 504, 506(2) read with section 34 of the Indian Penal Code against the Respondent and his family members. He further submits that thereafter the Applicant filed an Application under section 125 of the Cr. P. C. bearing No.31/2014 before the Judicial Magistrate, First Class, Barshi, Dist. Solapur for monthly maintenance of Rs.5000/- for herself and Rs.3000/- each to her two minor children. He submits that both these two proceedings filed by wife against the Respondent husband are pending at Barshi.

5. The learned counsel for the Applicant submits that the Respondent husband, with mala fide intention, filed HMP No.105/2014 in the court of Civil Judge, Senior Division, Srigonda, Dist. Ahmednagar under section 9 of the said Act for restitution of conjugal rights. He submits that the Applicant being lady, is unable to travel to Srigonda which is 170 km away from Barshi. He submits that it is very difficult for her to attend the court at Srigonda on every date. He submits that the Applicant is unable to travel along with her minor children. He submits that the Applicant needs company of her father or any other family member to visit Srigonda. He submits that the Applicant's father fall ill frequently, therefore, the Applicant is unable to attend the proceedings at Srigonda. He submits that the Applicant and her son are suffering from TB and they are taking medical treatment at Barshi, because of that also, the Applicant is unable to attend the court at

Srigonda. He submits that to attend the court at Srigonda, she has to travel near about 170 km, one way. Considering the earlier behavior of the Respondent husband, the Applicant has a reasonable apprehension that the Respondent or his family members or any other person on his behalf may cause danger to the life of the Applicant, if the Applicant goes Srigonda for attending the matter. The advocate for the Applicant submits that the Applicant has good chance of success in the present matter. He submits that in the interest of justice, this Hon'ble Court be pleased to transfer the petition filed by the Respondent under section 9 of the said Act from Srigonda to Barshi for hearing and final disposal on merit.

6. Heard the learned counsel for the Applicant at length. None for the Respondent though duly served. The petition filed by the Respondent husband under section 9 of the said Act at Srigonda is pending for final hearing and disposal on merit. That proceeding was filed by the Respondent husband after two proceedings were filed by the Applicant wife at Barshi, one under section 498-A of the IPC and another under section 125 of the Cr. P.C. Considering the fact that the Applicant is a housewife and she does not have any source of income and she has to maintain her two minor children, it is very difficult for her to attend each and every date at Srigonda. Moreover, she has to spend huge amount for attending the court at Srigonda on every date. Apart from that, the Applicant and her son are not keeping well. They are suffering from TB. These facts are stated by the Applicant in the Misc. Civil Application.

7. 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 the Apex Court in the matter of *Deepti Bhandari Vs. Nitin Bhandari & Anr.* 2012 (1) SCC 725.

8. Considering the submissions made by the learned counsel for the Applicant and the law laid down by the Apex Court in the aforesaid matters, I am of the opinion that the Applicant has made out a case for allowing the Civil Application.

9. Hence, following order is passed:

a. Misc. Civil Application is allowed in terms of prayer clause (a) which reads thus:

(a) This Hon'ble Court be pleased to transfer the proceeding bearing HMP No.105/2014 filed by the Respondent which is pending before the Larned Civil Judge, Senior Division, Srigonda, Dist. Ahmednagar to Civil Judge, Senior Division, Barshi, Dist. Solapur.

b. Civil Application stands disposed off accordingly.

(K.K. TATED, J.)