IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO.85 OF 2015

Nisha Vijay Kotkar .. Applicant
Vs.
Vijay Bhika Kotkar .. Respondent

Mr.Sai Chaugule i/by Mr.S.S. Deshmukh for the applicant.
Mr.Karan Thorat for the respondent.

CORAM : R.D. DHANUKA, J.
DATE : 26th November 2015

P.C.

. By this miscellaneous civil application filed under Section 24 of the Code of Civil Procedure, 1908, the applicant seeks transfer of the proceedings described in prayer clause (b) of the application filed by the respondent husband before the Family Court, Nashik to the Court of Civil Judge, Senior Division, Jalgaon. Some of the relevant facts for the purpose of deciding this application are as under :-

2. The marriage of the applicant and the respondent was solemnized on 24th April 2012. There are no issues out of the said wedlock. The applicant and respondent started residing at Nashik with the parents of the respondent after the marriage. The applicant, however, has been staying with her father since November 2012. The applicant is unemployed. The applicant states that the respondent is employed with Parle Company and was earning Rs.35,000/- per month as per the information given by the family members of the respondent. The respondent had denied this allegation. The respondent had filed proceedings in the family Court, Nashik for restitution of conjugal rights.

3. Learned counsel for the applicant invited my attention to the averments made in the misc. civil application and also to the annexures thereto and submits that father of the applicant is a retired person who was working as a junior clerk in the Agricultural University. Therefore, he was not financially capable of meeting the demands of the respondent and his family members. The applicant though graduate is unemployed. He submits that the distance between the Jalgaon and Nashik is around 250 km. The applicant cannot afford to spend any money for accommodation, food and for attending the proceedings at Nashik Court. There is no male member in her family to accompany her for attending the proceedings at Nashik. Learned counsel for the applicant has no objection if the matter be referred to mediator as suggested by the respondent in the affidavit-in-reply.

4. Learned counsel for the respondent, on the other hand, submits that the respondent had filed proceedings for restitution of conjugal rights and has no objection, if the applicant wishes to co-habit with the respondent. He submits that parents of the applicant did not inform the respondent before his marriage was solemnized with the applicant that she was not keeping good health and was suffering from various diseases and even her eye sight was weak. He submits that the respondent has also old parents and are residing together in a rental house. The respondent has a paramount duty to look after his parents. He submits that it is submitted by the respondent in the affidavit-in-reply that the matter may be referred to mediator. Learned counsel for the respondent states that before transferring the proceedings, this Court shall refer the parties to a mediator.

5. A perusal of the record prima facie indicates that there is no dispute that since November 2012, the applicant has been residing with her father. Father of the applicant is a retired person. The applicant is unemployed. Father of the applicant has been staying at Baroda. Nobody is available to accompany with the applicant for attending the proceedings at Nashik. The respondent has been earning sufficiently. Both the parties have no objection if the matter is referred to a mediator. Statement is accepted.

6. In my view, from the grounds stated aforesaid, the applicant has made out a case for transferring the proceedings from the Family Court at Nashik to the Court of Civil Judge, Senior Division, Jalgaon. The Supreme Court and this Court in the catena of decisions had taken a consistent view that while considering the application under Section 24 of the Code of Civil Procedure, 1908, the Court has to consider the convenience of the wife in addition to the other related factors. In my view, the respondent who has been earning sufficiently will be in a position to attend the proceedings at Jalgaon where the applicant stays with her father. In view of the fact that both the parties have made a suggestion that the matter be referred to a mediator, the Civil Judge, Senior Division, Jalgaon shall refer the parties for mediation before the appropriate Judge for hearing and final disposal of the matter.

7. I therefore pass the following order :-

(a) Misc. civil application is allowed in terms of prayer clause (b);

(b) The Family Court at Nashik is directed to transfer the proceedings described in prayer clause (b) of the misc. civil application to the

learned Civil Judge, Senior Division, Jalgaon for hearing and final disposal;

(c) The learned Civil Judge, Senior Division, Jalgaon shall refer the parties to mediator. The parties to explore the amicable settlement before the learned mediator;

(d) If the matter is not settled amicably before the learned mediator, the learned Civil Judge, Senior Division, Jalgaon shall dispose of the proceedings on being transferred from the Family Court at Nashik expeditiously;

(e) Both the parties are directed to co-operate with each other and with the learned Civil Judge, Senior Division, Jalgaon in expeditious disposal of the proceedings filed by the respondent;

(f) Misc. civil application is disposed of in aforesaid terms;

(g) There shall be no order as to costs.

R.D. DHANUKA, J.