

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

MISCELLANEOUS CIVIL APPLICATION NO.127 OF 2014

George S/o Poullose

.. Applicant

vs.

Binsy W/o George

.. Respondent

Ms.Prerana Manan i/b Mr.Vishal Patil for the applicant

None for the respondent

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

PC:

1 Heard the learned counsel for the applicant.

2 None for the respondent though duly served.

3 This court by order dated 25.7.2014 directed office to issue notice to the respondent for final disposal of the matter, returnable on 19.9.2014. Respondents were duly served. Advocate has filed Vakalatnama on behalf of the respondent.

4 When the matter was on board on 20.11.2014 no one appeared on behalf of the respondent. Hence, this court directed advocate for the applicant to inform next date either to the respondent or her advocate

in writing. Thereafter matter appeared on board on 27.11.2014. On that date also, no one appeared on behalf of the respondent. On that date, this court granted ad-interim relief in terms of prayer clause (b) which reads thus:

“(b) Pending the hearing and final disposal of the present Application, all the further proceedings in Marriage Petition No.A946/2013 filed by the Respondent against the Applicant at Bandra Family Court on 06/04/2013 for restitution of conjugal rights may be stayed.”

5 Thereafter matter was on board before this court on 23.3.2015, 16.4.2015, 3.7.2015. On this date, no one appeared on behalf of the respondent. Hence, matter is taken on board for final hearing at the stage of admission as per earlier order passed by this court.

6 Applicant husband filed Divorce Petition bearing No.A-240 of 2012 in the Family Court at Thane under section 10(1)(x) of the Indian Divorce (Amendment) Act, 2001 on 30.7.2012. She submits that thereafter the respondent wife filed petition no.A-946 of 2013 for restitution of conjugal right under section 32 of the Divorce Act, 1869 before the Family Court at Bandra, Mumbai. She submits that though the respondent is residing at Kanjurmarg Area in Mumbai she filed petition for conjugal rights before the Family Court at Bandra Mumbai just to harass the applicant.

7 The learned counsel for the applicant submits that the respondent wife is residing at Kanjurmarg and the distance between

Kanjurmarg and Thane Family Court is less than the Bandra Family Court. She submits that the respondent wife has been attending the Marriage Petition No.A-240 of 2012 in the Family Court at Thane. In support of this contention, the learned counsel for the applicant relies on the roznama of the petition No.A-240 of 2012 from 1.8.2012 to 5.2.2014. She submits that it is crystal clear from the roznama that the respondent wife has been attending the family court at Thane on several occasions. She further submits that the applicant as well as respondent both of them are working. If the matter is transferred from Bandra to Thane Court then it will be convenient to the respondent also. She further submits that petition filed by the applicant is prior in time to the petition filed by the respondent for conjugal rights. She further submits that this court stayed further proceedings in Marriage Petition A-946 of 2013 filed by the respondent at Family Court, Bandra, Mumbai on 27.11.2014. Since then, no one appeared on behalf of the respondent wife. Hence, in the interest of Justice, petition filed by wife for conjugal rights at Family Court Bandra, Mumbai be transferred to the Family Court at Thane for hearing and final disposal on its own merits. She submits that if the present application is not allowed, irreparable loss will be caused to the applicant. She submits that if present application is allowed that will be in the interest of both the parties because applicant is residing at Thane whereas respondent wife is residing at Kanjurmarg which is about 3-4 kms. away from Thane.

8 I have heard the learned counsel for the applicant at length. Respondent is duly served. She engaged advocate who filed Vakalatnama. No one appeared for last several dates whenever matter appeared on board. This application is preferred by husband for

transferring the petition filed by wife for conjugal rights in the Family Court at Bandra, Mumbai to the Family Court at Thane.

9 In the present proceeding, applicant husband filed Divorce Petition in Family Court at Thane on 30.7.2012 and thereafter wife filed petition for conjugal rights in Family Court, Bandra at Mumbai on 6.4.2013. Even the distance between Thane and Kanjurmarg where respondent wife is residing is just 5.6 kms. It is convenient to both the parties if the matters are heard and finally decided at Family Court, Thane. Considering these facts I am of the opinion that applicant has made out a case for allowing this application. Hence, following order is passed:

- a) Office of the Family Court, Bandra Mumbai is directed to transfer papers and proceeding of Petition A-946 of 2013 filed by Mrs.Binsy w/o. George for conjugal rights under section 32 of the Divorce Act, 1869 to the Family Court at Thane for hearing and final disposal on its own merits.
- b) Misc. Civil Application is disposed of accordingly.

(K.K.TATED, J.)

CERTIFICATE

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