

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

MISCELLANEOUS APPLICATION NO.193 OF 2014

Neelam w/o. Shirin Ankalwar .. Applicant

V/s.

Shirin Ramesh Ankalwar ... Respondent

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Mr. Onam Hingorani i/b. Mr. V. K. Hingorani, Advocate for the Applicant.

Ms. Smita Ranpise, Advocate for the Respondent.

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CORAM : R. K. DESHPANDE, J.

DATED : AUGUST 13, 2015.

P.C.

The respondent - husband has filed petition no. A-1254 of 2012 in the Family Court at Nagpur under Section 12(1)(a)(b) of the Hindu Marriage Act, 1955, to declare the marriage with the applicant as nullity. The applicant - wife has filed her written statement opposing the claim made by the respondent - husband. The matter is pending. This application under Section 24 of the Code of Criminal Procedure seeks transfer of the said petition from the Family Court at Nagpur to the Family Court at Bandra, Mumbai. Various grounds are raised for seeking such transfer including the ground of inconvenience which is caused to the applicant - wife.

2 The notice was issued in this matter on 14th October, 2014 and the proceedings before the Family Court at Nagpur are stayed. The respondent – husband has appeared before this Court in person. The learned counsel for the applicant – wife submits that the applicant – wife is also personally present before this Court.

3 It is not in dispute that the criminal proceedings under Section 498 A of the Indian Penal Code are instituted and those are pending in the Court at Nagpur. It is also not in dispute that the applicant-wife has instituted complaint No.66/DV/2013, which is pending in the Court of 29th Metropolitan Magistrate Court at Dadar, Mumbai, claiming several reliefs including one of the maintenance pending the dispute between the parties. The wife has also instituted the proceedings under Section 125 of the Code of Criminal Procedure for grant of maintenance being No.E/100371 of 2013, which is pending in 6th Family Court at Bandra, Mumbai. It is further an undisputed position that till this date no order is passed under Section 125 of the Code of Criminal Procedure for grant of maintenance. It is also an

undisputed position that in the application for grant of interim maintenance filed under Section 24 of the Hindu Marriage Act. The Court has passed an order granting interim maintenance at the rate of Rs.2,000/- (Rupees Two Thousand) per month from 8th August, 2013. It is also not in dispute that the respondent - husband has not paid the amount of maintenance to the applicant - wife till this date.

4 In the light of the aforesaid factual position, by consent of the parties, the following order is passed:

:: ORDER ::

(i) That Petition No.A-1254 of 2012 pending in the Family Court No.4 at Nagpur is transferred to the Family Court at Bandra, Mumbai for trial and ultimate decision in accordance with law;

(ii) The proceedings under Section 125 of the Code of Criminal Procedure being No.E/100371/2013, which is pending in 6th Family Court at Bandra, Mumbai, shall be tried together with Petition No. A-1254 of 2012, which is transferred to

the Family Court at Bandra. The parties shall be at liberty to fight out the proceedings under Section 125 of the Code of Criminal Procedure in accordance with law. It shall be open for them to challenge the order, if any, passed adverse to their interest in appropriate forum;

- (iii) The respondent - husband undertakes to deposit arrears of Rs.48,000/- (Rupees Forty Eight Thousand) at the rate of Rs.2,000/- (Rupees Two Thousand) per month calculated from 8th August, 2013 till this date on 30th September, 2015 in the Family Court at Bandra, without prejudice to his rights. He further submits that he shall continue to pay the amount of monthly maintenance at the rate of Rs.2,000/- (Rupees Two Thousand) on or before 10th of every month directly in the account of the applicant - wife by electronic transfer. This arrangement shall continue without prejudice to the right of parties;

(iv) The applicant - wife submits that in view of the aforesaid arrangement, she does not want to continue the proceedings under the Domestic Violence Act registered bearing No.66/DV/2013 and pending in the Court of Metropolitan Magistrate (29th Court at Dadar, Mumbai). Hence, the said proceedings stand quashed and set aside;

(v) In view of the aforesaid arrangement, the parties to appear before the Family Court at Bandra on 30th September, 2015. The Family Court at Bandra shall tag the proceedings under Section 125 of the Code of Criminal Procedure and the petition for divorce together. The dates in the proceedings shall be as far as possible as per the convenience of the respondent - husband;

(vi) It is made clear that the setting aside of the complaint under Domestic Violence Act shall not come in the way of prosecuting any other proceedings including 498 A of the Code of

Criminal Procedure;

(vii) This application thus stands disposed of.

JUDGE