

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE SIDE JURISDICTION.

MISC. CIVIL APPLICATION (ST) NO.17738/2015

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. S. R. Vishnu for the Applicant
Mr. Rahul S. Gorde for the Respondent.

CORAM : K. K. TATED, J.
DATE : SEPTEMBER 16, 2015

P.C.:

1. Heard. This Application is made by wife under section 24 of the Code of Civil Procedure, 1908 for transfer of divorce petition filed by Respondent husband under section 13(1)(ia) of the Hindu Marriage Act 1955 in the court of Civil Judge, Senior Division, Pune to the Family Court at Bandra, Mumbai.

2. The learned counsel for the Applicant submits that the Applicant is a house-wife. She does not have any source of income. He submits that the Applicant has 5 years old child. He submits that at present, she is residing with her parents. He submits that it is very difficult for her to attend each and every date at Pune Court along with her minor child. He submits that in the

interest of justice, this Hon'ble Court be pleased to transfer the divorce petition filed by the Respondent at Pune to Family Court at Bandra, Mumbai. He further submits that if Misc. Civil Application is not allowed, irreparable loss will be caused to the Applicant. He submits that the Applicant has good chance of success in the divorce petition filed by the Respondent husband.

3. The learned counsel for the Applicant submits that on 09/12/2014 the Respondent attempted to assault the Applicant. Hence, the Applicant filed a complaint with police station. He submits that thereafter again the Respondent assaulted the Applicant at Pune. Hence, the Applicant again filed complaint with police. In support of this contention, the learned counsel for the Applicant relies on a copy of the complaint as well as hospital case papers dated 09/12/2014 to show the injuries. The learned counsel for the Applicant submits that if the matter is not transferred from Pune to Mumbai, it would be very difficult for the Applicant to attend the matter at Pune on each and every date. He submits that in the interest of justice, this Hon'ble Court be pleased to allow the Misc. Civil Application and transfer the divorce petition filed by the Respondent

husband at Pune to Family Court at Bandra, Mumbai.

4. On the other hand, the learned counsel for the Respondent husband vehemently opposed the Civil Application. He filed Affidavit-in-Reply dated 16/09/2015. The learned counsel for the Respondent submits that at present, the Respondent is in service, where he gets only Rs.7000/- pm salary. He submits that if the matter is transferred from Pune to Mumbai, it would be very difficult for him to attend each and every date. He submits that it is not possible for the Respondent to bear the travelling and other expenses, if matter is transferred to Mumbai. In support of this contention, he relies on the judgment of the Apex Court in the matter of ***Damyanti Devi Vs. Indrajeet 2007 DGLS (Soft) 1314***. He submits that in that proceedings, the Apex Court rejected the wife's Application for transfer of divorce petition No.417/2005 from the Family Court at Azamgarh, UP to the District Court within the Delhi jurisdiction. However, the Apex Court directed the husband to pay sum of Rs.5000/- towards travelling and other expenses to the wife on each date of attendance at Azamgarh. On the basis of this submission and the authority of

the Apex Court, the learned counsel for the Respondent submits that, there is no substance in the Application, same be dismissed with costs.

5. Heard both sides. It is to be noted that, in the present proceedings, the Applicant is a housewife. She does not have any source of income. It is very difficult to the Applicant to maintain her 5 years old. It is very difficult for the Applicant to attend each and every date at Pune along with her minor child of 5 years. This court, in the matter of ***Megha Madan Nayak Vs. Madan Nayak 2013(4) BCR 211*** held that a convenience of the Applicant wife is required to be looked into at the time of deciding Application under section 24 of the Code of Civil Procedure, 1908 for transfer of divorce petition from one place to another.

Even the Apex Court, in the matter of ***Pratibha Khema Vs. Sanjay Kumar Khemka 2005(2) LJ Soft SC 19*** held that the convenience of a lady has to be kept in mind at the time of deciding the Application for transfer of divorce petition from one place to another place.

6. Considering the submission made by the learned counsel for the Applicant, reasons given in the Civil Application and the law laid down by the

Apex Court, I am satisfied that the Applicant has made out a case for allowing the Civil Application.

7. Hence, the following order is passed:

a. The office of the Civil Judge, Senior Division, Pune is directed to transfer the HMP No.83/2015 to Family Court at Bandra, Mumbai for hearing on merits.

b. Misc. Civil Application stands disposed off accordingly.

JUDGE

CERTIFICATE

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