

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
MISCELLANEOUS CIVIL APPLICATION NO.172 OF 2014

Nishant Anil Bhargave	...	Applicant
Vs.		
Rupa Nishant Bhargave	...	Respondent

Mr. Amey Deshpande for Applicant.
Mr. Rameshwar N. Gite for Respondent.

CORAM : R. G. KETKAR, J.
DATE : 7TH APRIL, 2015

P.C. :

Heard Mr. Deshpande, learned Counsel for the applicant and Mr. Gite, learned Counsel for the respondent at length.

2. By this Application under Section 24 of the Code of Civil Procedure, 1908, the applicant-husband has prayed for transfer of H.M.P.No.289 of 2013 filed by him in the Court of Civil Judge Senior Division, Niphad, District Nashik to the Family Court at Nashik and be tried along with H.M.P.No.452 of 2012 filed by the respondent-wife.

3. Mr. Deshpande submitted that the applicant has filed H.M.P.No.289 of 2013 under Section 13(1)(i-a) and (i-b) of the Hindu Marriage Act, 1955 (for short 'Act') for dissolution of marriage. The said proceedings are filed in the Court of Civil Judge, Senior Division, Niphad. Respondent-wife has instituted H.M.P.No.452 of 2012 in the Family Court at Nashik under Section 9 of the Act. He submitted that in the Petition instituted by the applicant, his affidavit of evidence is ready. As far as the Petition instituted by the respondent-wife is concerned, she has filed her affidavit of evidence and the applicant has to cross-examine her. He, therefore, submitted that for convenience of both the parties,

the proceedings instituted by him may be transferred to the Family Court at Nashik where the Petition of the respondent is also pending.

4. On the other hand, Mr. Gite opposes this application on the ground that the applicant ought to have applied for transfer at the earliest available opportunity. He further submitted that as far as Petition instituted by the respondent is concerned, she has already filed affidavit of evidence and since the trial has commenced, the belated request made by the applicant need not be entertained.

5. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, the applicant has instituted proceedings in the Court of Civil Judge Senior Division, Niphad, District Nashik for divorce. Respondent has also instituted proceedings for restitution of conjugal rights in the Family Court at Nashik. As noted earlier, the applicant is yet to file his affidavit of evidence in his proceedings. No doubt, respondent has filed affidavit of her evidence in the Petition instituted by her. She is yet to be cross-examined by the applicant.

6. In view thereof as also having regard to the convenience of both the parties, in my opinion, the applicant has made out a case for transfer of proceedings filed by him. Hence, Miscellaneous Civil Application is allowed in terms of prayer clause (a) with no order as to costs. All the parties including the learned Civil Judge, Senior Division, Niphad, District Nashik will act upon the authenticated copy of this order. Order accordingly.

(R. G. KETKAR, J.)