

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

MISC. CIVIL APPLICATION NO. 171 OF 2014

Manisha Sanjay Shedge	.. Applicant
V/s.	
Sanjay Vittal Shedge	.. Respondent

Mr. Anil Gawas for the applicant.
None for the respondent.

**CORAM : K. K. TATED, J.
DATED : 15/10/2015.**

PC.:

. Heard learned Counsel for the applicant.

2 Though the respondent is duly served, no one appeared on behalf of him when the matter called out.

3 The learned Counsel for the applicant submits that he filed affidavit of service dated 08.12.2014 stating that the respondent refused to accept the service when they tried to serve him personally. Paragraph no. 2 of affidavit of service reads thus:

“2. I further state that after visiting the above said address, I inquired about the Respondent at that time MR. MILIND MANOHAR PAWAR shown me that the person standing in the room is the Respondent. After making inquiry in respect of his name, he told me that MR. SANJAY VITTAL SHEDGE. I, thereafter, informed him my purpose of visit and handed over the Notice dated 24.11.2014 along with the copy of Misc. Civil Application and asked him to give his signature on the O/C of ADV. ANIL S. GAWAS letterhead. After taking the notice and copy of Miscellaneous Civil Application, the

Respondent made inquiry with the neighbors. Thereafter, some time he refused to give acknowledgment on the office copy and return the Notice along with the copy of Miscellaneous Civil Application. Hereto annexed and marked "Exhibit A" collectively are the copies of Notice dated 24.11.2014 and Misc. Civil Application."

4 The learned Counsel for the applicant submits that as the respondent refused to give acknowledgment on the Advocate's letter for service, that to be treated as good service. The same is accepted.

5 This application is preferred by wife under Section 24 of Civil Procedure Code, 1908 for transfer of H. M. Petition No. 209 of 2013 filed by respondent husband under Section 13 in the Court of Civil Judge, Senior Division, Panvel to the Family Court at Bandra, Mumbai.

6 The learned Counsel for the applicant submits that applicant wife filed petition for maintenance under Section 125 of Cr. P.C. in Family Court at Bandra, Mumbai on 17.10.2012 claiming maintenance of Rs.20,000/- per month for the petitioner and Rs.2000/- per month for minor daughter Aarya. He submits that in that application, applicant preferred interim application no. 176 of 2013. He submits that application was decided by the Family Court at Bandra, Mumbai by order dated 08.11.2013 directing respondent husband to pay an amount of Rs.1500/- to the applicant and Rs.800/- per month to the daughter Aarya as interim maintenance from the date of application i.e. 19.06.2013 till the disposal of the main petition. He submits that though the said order was passed by the family Court after hearing both the sides, till today the respondent husband has not paid a single

pai towards the maintenance. To that effect, the applicant made averments in the petition in ground no.10.

7 The learned Counsel for the applicant submits that at present, the applicant is staying at Borivali, Mumbai along with her parents and she is household wife. She does not have any source of income. She has to depend for financial assistance on her parents. Though, the Family Court at Bandra directed respondent husband to pay maintenance, the same was not paid by him till today. He submits that it is very difficult for applicant to travel from Mumbai to Panvel along with her small child to attend each and every date in Hindu Marriage Petition filed by the respondent husband for divorce. He further submits that in any case, the respondent husband is attending the Family Court, Bandra in a Petition filed by the applicant under Section 125 of Cr. P.C. Hence, in the interest of justice, this Hon'ble Court be pleased to transfer Hindu Marriage Petition filed by the respondent husband for divorce before the Civil Judge, Senior Division, Panvel to the Family Court at Bandra, Mumbai. He submits that if the application is not allowed, irreparable loss and injury will be caused to the applicant.

8 Heard learned Counsel for the appellant at length. Though, the respondent is duly served, no one appeared on behalf of him when the matter called out.

9 In the present proceeding, the application filed by the wife under Section 125 of Cr. P.C. for maintenance is pending before the Family

Court at Bandra, Mumbai. Applicant has small child of aged 4 years. She does not have any source of income. It is very difficult for lady to travel along with her minor child to Panvel for attending each and every date for divorce petition.

10 The Apex Court in the matter of *Pratibha Khemka V/s. Sanjay Kumar Khemka, reported in 2005(2) LJSOFT SC 19* and in the matter of *Dipti Bhandari V/s. Nitin Bhandari, reported in (2012) 1 Supreme Court Cases 725* held that convenience of a lady is required to be considered at the time of deciding the application for transfer of divorce petition from one place to another.

11 Considering the submissions made by the learned Counsel for the applicant and law laid down by the Apex Court, I am of the opinion that applicant has made out case for allowing this application.

12 Hence, following order.

a) Office of Civil Judge, Senior Division at Panvel is directed to transfer the papers and proceeding of H. M. Petition No. 209 of 2013 filed by Sanjay Vittal Shedge for divorce under Section 13 of Hindu Marriage Act, 1955 to Family Court at Bandra, Mumbai for hearing and final disposal on its own merits.

b) Miscellaneous Civil Application is allowed accordingly.

(K.K.TATED, J.)