

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

MISC. CIVIL APPLICATION NO.166/2015

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. P. S. Nadar for the Applicant

CORAM : K. K. TATED, J.
DATE : OCTOBER 5, 2015

P.C.:

1. Heard. None appeared for the Respondents, though duly served by private notice. The learned counsel for the Applicant filed an Affidavit of service dated 27/08/2015.

2. This court issued notice to the Respondent on 07/08/2015 for final disposal of the matter. Hence, the matter is taken on board for final disposal.

3. This Application is made by wife under section 24 of the Code of Civil Procedure, 1908 for transfer of petition bearing HMP No.64/2015 filed by the Respondent husband under section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights in the court of Civil Judge, Senior

Division, Malshiras, Dist. Solapur to the Family Court at Bandra, Mumbai.

4. The learned counsel for the Applicant submits that at present the Applicant is residing with her parents in Mumbai. He submits that her parents are senior citizen. Their financial position is very weak. It is not possible for them to finance the Applicant to attend each and every date in a petition filed by the Respondent husband at Malshiras. He submits that the Applicant is housewife. She has no source of income. He submits that the Applicant has to look after her 2 year old minor daughter. He submits that the Applicant filed divorce petition under section 13(1)(ia) of the Hindu Marriage Act, 1955 bearing No.A-587/2015 in the Family Court at Bandra on 11/02/2015. He submits that same is pending for final disposal on merits. He submits that the Respondent husband filed petition under section 9 of the Hindu Marriage Act, 1955 on 09/06/2015 i.e. subsequent to the Applicant's divorce petition. He submits that in the interest of justice, this Hon'ble Court be pleased to transfer the petition filed by the Respondent husband at Malshiras to the Family Court at Bandra, Mumbai for hearing and final disposal along with petition No.A-587/2015 filed

by the Applicant wife.

5. He submits that if the Application is not allowed, irreparable loss will be caused to the Applicant. He submits that the Applicant has good chance of success in the matter.

6. Heard the learned counsel for the Applicant at length. Though the Respondent husband is duly served, none appeared for him.

7. Considering the fact that the Applicant is a house-wife and she does not have any source of finance and her parents are senior citizen and the Applicant has to maintain her 2 year minor child, I am of the opinion that the Applicant has made out a case for allowing the Civil Application.

8. This Court in the matter of ***Megha Madan Nayak Vs. Madan Nayak 2013(4) BCR 211*** held that the wife's convenience must be looked into. In the present case also the situation and the facts are identical such as no independent income. 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 to be given priority at the time of deciding the Application for

transfer of divorce petition from one place to another place.

9. In view of the above mentioned facts and the law declared by the Apex Court, I am of the opinion that the Applicant has made out a case for allowing the Civil Application.

10. Hence, following order is passed:

a. The Application is allowed in terms of prayer clause (a) which reads thus:

(a) The proceedings pending before the Court of the Senior Division, Malshiras Court for restitution of conjugal rights under section 9 of the Hindu Marriage Act, 1955 being HMP No.64/2015 be transferred to the Family Court at Bandra, Mumbai.

b. Civil Application stands disposed off accordingly.

JUDGE

CERTIFICATE

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