

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****MISC.CIVIL APPLICATION NO. 211 OF 2015****Mamta Nilesh Joshi & Ors.****..... Applicants****VERSUS****Nilesh Madhukar Joshi****..... Respondent**

Ms.Jayshree Thakkar for the Applicant.

None for the Respondent.

CORAM : R.D. DHANUKA, J.**DATED : 17th NOVEMBER, 2015****P.C.**

By this miscellaneous civil application filed under section 24 of the Code of Civil Procedure, 1908, the applicants seek transfer of two proceedings filed by her before the Family Court at Thane to Satara District Court which is described in prayer clause (b) of the application. The respondent is absent though served. No affidavit in reply is filed. Some of the relevant facts for the purpose of deciding this application are as under :-

2. Applicant no.1 is the wife of the respondent and is mother of applicant nos. 2 and 3. Applicant nos. 2 and 3 are minor. Marriage of the applicant no.1 was solemnized on 27th May, 1998 at Dadra Mangal Karyalaya, District Yavatmal. It is the case of the applicant no.1 that till her separation from the respondent on 24th December, 2009 the applicant no.1 was staying with the respondent at her matrimonial home at Nagpur and thereafter shifted to Thane to stay with her brother and two children. The applicant no.1 thereafter filed few proceedings against the respondent at Thane before the concerned family court.

3. The learned counsel appearing for the applicants invited my attention to the documents annexed to the application in support of her submission that the applicant no.2 has been studying in 10th Standard in Sainik School at Satara District and applicant no.3 has been studying in 5th Standard at Primary Sainik School Satara District. In support of this submission, learned counsel invited my attention also to the relevant documents issued by the school in which both these applicants are admitted. She submits that applicant no.1 is to look after, take care of applicant nos. 2 and 3 who are minor children. Learned counsel submits that the applicant no.1 is a housewife and is unable to bear the travelling expenses. She is unable to leave applicant nos. 2 and 3 alone in the house when she is required to be attend the proceedings before the Family Court at Thane which causes inconvenience apart from financial hardship.

4. Learned counsel appearing for the applicants states that the respondent has not even complied with the consent order passed by the family court in toto insofar as payment of maintenance is concerned. She submits that the respondent is not maintaining applicant no.1 and her two children and thus this court shall transfer the said two proceedings which were filed by the applicant no.1 to the concerned court at Satara which court would have jurisdiction to entertain and try both these proceedings.

5. A perusal of record indicates that both these proceedings were filed by the applicant no.1 at Thane when she was staying with her brother. The applicant no.1 has shifted to Satara along with her two children who are minor. Applicant no.1 has no source of income. Respondent has even not complied with the consent order passed by the family court in toto and is in arrears of Rs.67,000/- according to the applicants.

6. A perusal of the record also indicates that the respondent who is husband of the applicant no.1 who was attending the proceedings at Thane by visiting Thane from Nagpur. In my view thus no prejudice would be caused to the respondent if the proceedings are transferred to Satara where applicant no.1 has shifted along with her two minor children. The averments made in the application are deemed to have been admitted. This court has to consider the convenience of the wife and children while considering the application for transfer of the proceedings under section 24 of the Code of Civil Procedure, 1908.

7. In view of the aforesaid reasons, I pass the following order :-

- (a) Miscellaneous Civil Application No.11 of 2015 is made absolute in terms of prayer clause (a).
- (b) The Family Court Thane is directed to transfer the proceedings described in prayer clause (a) of the application to the District Court Satara expeditiously.

8. Miscellaneous civil application is disposed of in the aforesaid terms. No order as to costs.

[R.D. DHANUKA, J.]