

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

MISCELLANEOUS CIVIL APPLICATION NO.219 OF 2014

Sonali Dattatraya Mandhare .. Applicant

V/s.

Dattatraya Dilip Mandhare .. Respondent

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Mr. A. S. Kulkarni, Advocate for the Applicant.

Mr.Prathamesh Kamat i/b. Mr. Kushal Mor, Advocate for the Respondent.

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CORAM : R.K. DESHPANDE, J.

DATED : JULY 31, 2015.

P.C.

This application under Section 24 of the Code of Civil Procedure seeks transfer of the matrimonial petition i.e. Marriage Petition No.239 of 2014 from the Family Court at Pune to the Family Court at Solapur. The applicant is the wife and she is staying at Solapur, whereas, the respondent – husband is stationed at Pune and is in private job. The petition for divorce is filed on the ground of cruelty more particularly stated in the petition that the applicant – wife is schizophrenic. The wife was admitted in the hospital and is required to be taken care of by her parents. The applicant – wife has filed the

petition for restitution of conjugal rights in the Family Court at Solapur. The applicant – wife has expressed several difficulties including that her parents are old age and the distance between Solapur and Pune is about 300 kilometer. It is further stated that there is no one to accompany the applicant – wife from Solapur to Pune for attending the Court proceedings.

2 The respondent – husband has opposed the said prayer on several grounds including that he is prepared to pay the to and fro charges to the applicant – wife for her travel from Solapur to Pune on each date of her attendance along with the expenses of one person, as an escort. The learned counsel for the respondent has relied upon the following decisions of the Apex Court for the proposition that in such a case the Court should not exercise its jurisdiction under Section 24 of the Code of Civil Procedure for transfer of the matter:

- i) *Dr. Subramaniam Swamy Vs. Ramakrishna Hegde*¹
- ii) *Teena Chhabra Vs. Manish Chhabra*²
- iii) *Eluri Raji Reddy & Ors. Vs. State of Delhi & Anr.*³
- iv) *Kanagalakshmi Vs. A. Venkatesan*⁴.

1) (1990) 1 Supreme Court Cases 4;

2) (2004) 13 Supreme Court Cases 411;

3) (2004) 4 Supreme Court Cases 479;

4) (2004) 13 Supreme Court Cases 405.

3 The question as to whether the petition should be transferred or not depend upon the facts and circumstances of each case. The discretion to be exercised looking to the convenience of the wife. Keeping in view the difficulties expressed by the applicant – wife and the grounds on which the petition for divorce has been filed by the respondent – husband, the petition is required to be transferred. Even otherwise, the wife has filed a petition for restitution of conjugal rights which is pending in the Family Court at Solapure and the respondent – husband is bound to attend the proceedings. Hence, both these matters can be clubbed together and decided at one place. The decisions relied upon by the learned counsel for the respondent turns upon the facts of each case and there is no strait-jacket formula that if the husband expressed his willingness to pay to and fro expenses, the petition under Section 24 of the Code of Civil Procedure should not be entertained.

4 In view of the above, the Misc. Civil Application is allowed.

5 The marriage petition No.239 of 2014, pending in the Family Court at Pune to be tried and decided along with H.M.P. No.234 of 2014, pending in the Family Court at Solapur.

6 The Family Court at Solapur shall issue fresh notices to the parties upon receipt of record for proceeding with the matter.

7 No order as to cost.

JUDGE