

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISCELLANEOUS CIVIL APPLICATION NO.48 OF 2014

Mrs. Bharti Chaitrasingh Jadhav	.. Applicant.
Vs.	
Mr. Chaitrasingh Baburao Jadhav	.. Respondent.

Mr. R.N. Gite, for applicant.
Mr. Vedraj Toraskar i/b Mr. S.D. Dharmadhikari, for respondent.

Coram : Smt. R.P. SondurBaldota, J.
Date : 17th February, 2015

P.C.

1. This application is filed under Section 24 of Code of Civil Procedure for transfer of Hindu Marriage Petition No.272 of 2010 filed by the husband-respondent and pending in the Family Court, Nasik to the Court of Civil Judge Senior Division, Niphad, District Nasik. The applicant has also filed two proceedings against the respondent-husband. They are Hindu Marriage Petition No.137 of 2009 for restitution of conjugal rights u/s. 9 of Hindu Marriage Act, which is pending in the Court of Civil Judge, Senior Division, Niphad and the application being Criminal Application No.45 of 2009, pending in the Court of Judicial Magistrate, First Class at Niphad.

2. Mr. Gite, the learned advocate for the applicant submits that the respondent is not paying the maintenance regularly to the applicant. Since the applicant does not have source of income, it is difficult for her to attend to the court proceedings at Nasik by undertaking travel of the distance of over 60 kilo meters from her place of residence. There is no dispute that the respondent-husband is in arrears of maintenance. The learned counsel for the respondent seeks to explain the arrears by submitting that the respondent is working as labourer and as such does not have fixed income. Therefore, he is not able to pay the maintenance regularly. He also states that whenever the respondent earns money, he has been paying the maintenance to the applicant.

3. The second argument advanced by the learned Mr. Gite is that there is likelihood of conflicting decisions in the proceedings filed for restitution of conjugal rights by the applicant and the divorce petition filed by the respondent-husband. Copies of the two proceedings are annexed to the application. Perusal of the same shows that allegations made therein against each other are entirely different. As a result there is no chance for conflicting decisions in the two proceedings.

4. The third argument of Mr. Gite is that respondent-husband in any case is required to attend two proceedings filed by the applicant at Niphad and therefore, no prejudice can be caused to him, if the petition filed by him is transferred to Niphad.

3. Since the respondent-husband is admittedly in arrears of maintenance and further since he is admittedly unable to pay the maintenance charges regularly to the applicant, it would be in the interest of justice that the petition filed by the respondent is transferred to the place where the two petitions/proceedings filed by the applicant are pending. Hence, the application is allowed in terms of prayer clause (a).

(Smt. R .P. SondurBaldota, J.)