

vai

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO.117 OF 2015

Mrs.Lata S. Kumbhar	...Applicant
V/s.	
Sanjay V. Kumbhar	...Respondent

Ms.Dipika Batheja i/b Mr.Pravin Gaikwad for the Applicant.

None for the Respondent.

CORAM : R.D. DHANUKA, J.
DATE : 23RD FEBRUARY, 2016.

P.C. :-

1. Learned counsel appearing for the applicant states that the respondent has been served. The applicant has already filed affidavit of service. The statement is accepted. None appeared for the respondent when the matter was called out.
2. By this miscellaneous civil application the applicant seeks transfer of Hindu Marriage Petition No.226 of 2011 filed by the respondent husband in the Court of the learned Civil Judge, Senior Division, Karad at Satara to the Family Court at Mumbai for hearing and adjudication.
3. The applicant was married to the respondent at Karad on 23rd March, 2000. A male child is born out of the said wedlock, who is

about 12 years old and is residing with the applicant. It is the case of the applicant that in view of the misbehavior and mental as well as physical torture by the respondent and his family members to the applicant, the applicant left the matrimonial home and has been staying with her mother. The applicant is working on payment of daily wages and has to take care of her son, who is school going.

4. Learned counsel appearing for the applicant states that though the learned Civil Judge, Senior Division, Karad at Satara has passed an order of maintenance in favour of the applicant, the respondent has not complied with the said order since the date of passing of such order in the month of February, 2013. Learned counsel for the applicant states that the respondent has stopped attending the proceedings filed by him since 2013. The applicant has to take her son along with her, who is school going whenever the matter was listed for hearing before the learned Civil Judge, Senior Division, Karad at Satara. It is not possible now for the applicant to attend the said proceedings further. Since the respondent is not attending the proceedings, the matter is getting adjourned from time to time.

5. It is submitted by learned counsel for the applicant that the other family members of the respondent are residing at Mumbai.

6. Since no affidavit in reply has been filed by the

respondent, the averments made in the miscellaneous civil application are deemed to have been admitted. Even otherwise after hearing learned counsel for the applicant and on perusal of the averments made in the miscellaneous civil application and after perusal of the annexures, I am of the opinion that case is made out by the applicant for transfer of Hindu Marriage Petition No.226 of 2011 filed by the respondent in the Court of the learned Civil Judge, Senior Division, Karad at Satara to the Family Court, Mumbai. The Supreme Court and this Court in catena of decisions has held that while deciding the application filed under section 24 of the Code of Civil Procedure, 1908, convenience of the wife has to be considered by the Court.

7. I therefore, pass the following order :-

i). Miscellaneous Civil Application No.117 of 2015 is allowed in terms of prayer clause (a). The learned Civil Judge, Senior Division, Karad at Satara is directed to transmit the papers and proceedings of Hindu Marriage Petition No.226 of 2011 to the Family Court, Mumbai for hearing and adjudication.

ii). Upon transmission of the papers and proceedings in the Hindu Marriage Petition No.226 Of 2011, the learned Family Court at Mumbai shall make an endeavor to dispose of the said proceedings expeditiously and not later than one year from the date of

transmission of the proceedings.

iii). If the respondent chooses to remain absent before the learned Family Court at Mumbai, the learned Family Court at Mumbai shall not grant any adjournment in the matter unnecessarily.

8. The Miscellaneous Civil Application is accordingly disposed of in aforesaid terms. No order as to costs.

(R.D. DHANUKA, J.)