

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****MISC.CIVIL APPLICATION NO. 81 OF 2016**

Smt.Poonam Manish Lath,)
About 30 years of age, Occu : H/w,)
R/at, 504-A, Salasar Kripa Apartment,)
Bhagyashree Park Compound,)
Shivsena Lane, Bhayandar (West),)
Thane – 401 101) Applicant

VERSUS

Manish Kashiprasad Lath,)
Aged about 29 years, Occu. : Service,)
R/at, Pornima Sadan, Behind Priti Academy)
Kamla Nehru Nagar, Dhobighat,)
Ulhasnagar – 1, District – Thane) Respondent

Mr.K.I.Khandelwal, i/b. Khandelwal Associates for the Applicant.

Mr.Rajeshchandra Kanojia for the Respondent.

CORAM : R.D. DHANUKA, J.

DATE : 22nd NOVEMBER, 2016

JUDGMENT

By this miscellaneous civil application filed under section 24 of the Code of Civil Procedure, 1908, the applicant seeks transfer of the Marriage Petition No. 25 of 2016 filed by the respondent in the Court of Civil Judge, Senior Division, Kalyan, District Thane to the Court of the Family Court, Thane.

2. The marriage between the applicant and the respondent was solemnized on 13th May, 2013. The applicant has been residing with her parents at Bhayandar (West), Thane. The respondent is residing at Ulhasnagar, District Thane.

3. Learned counsel for the respondent raises a preliminary issue of jurisdiction of this court to entertain this miscellaneous civil application filed under section 24 of the Code of Civil Procedure, 1908 on the ground that this application for transfer of the proceedings from the Court of learned Civil Judge, Senior Division, Kalyan, District Thane to the Family Court, Thane could be filed only before the District Court, Kalyan since the Court of the learned Civil Judge, Senior Division, Kalyan is sub-ordinate to the District Court, Kalyan. Reliance is placed on section 24(3) of the Code of Civil Procedure in support of this submission.

4. Learned counsel for the respondent submits that the District Court as well as this High Court though have concurrent jurisdiction to transfer and withdraw the proceedings from the subordinate court, the applicant ought to have filed an application under section 24 of the Code of Civil Procedure, 1908 before the District Court, Kalyan and not in this court.

5. Learned counsel for the applicant submits that the power of the High Court and District Court are concurrent for transferring the proceedings before the courts which are sub-ordinate to the High Court and District Court. He submits that the applicant thus could have filed this proceeding before the High Court directly and was not required to file this proceedings at the first instance before the District Court, Kalyan.

6. A perusal of section 24 of the Code of Civil Procedure, 1908 clearly indicates that there is power conferred upon the High Court or the District Court as the case may be i.e. for transferring any proceeding described in Section 24(1)(B) or withdrawing the proceeding described in section 24(1)(B) from the court which

are subordinate to the High Court or the District as the case may be. In my view there is no substance in this submission of the learned counsel for the respondent. Since both the courts have concurrent jurisdiction to withdraw and transfer the proceedings which are pending before the learned Civil Judge, Senior Division, High Court being superior court can withdraw the proceedings filed by a party in the Court of Civil Judge, Senior Division, Kalyan and to transfer the same to the Family Court, Thane under section 24 of the Code of Civil Procedure, 1908. The objection raised by the learned counsel for the respondent is misconceived and is rejected.

7. Learned counsel appearing for the applicant submits that the applicant is a housewife and does not have source of income. The applicant has filed execution application in the executing court at Thane against the respondent. The respondent has filed an application for condonation of delay in the appeal for impugning the order passed in favour of the applicant. The said application is also filed at Thane. It is the case of the applicant that the respondent has been attending the proceedings filed by the applicant against the respondent at Thane.

8. Learned counsel appearing for the applicant submits that the father of the applicant is of old age and is not keeping good health and is retired. The father of the applicant is not able to accompany the applicant for attending the proceedings filed by the respondent at Kalyan Court. It is the case of the applicant that it takes about three hours to reach the Kalyan Court from her present place of residence at Bhayandar. According to the applicant, the distance between the place of the residence of the applicant and Kalyan Court is about 55 kms.

9. Learned counsel appearing for the respondent on the other hand submits that

the respondent is heart patient and he has been advised no to travel from Kalyan to any other place. He submits that the distance between the Bhayandar and Kalyan is not much. He submits that the applicant herself has filed complaint against the respondent under the provisions of section 498A and other provisions at Kalyan.

10. Learned counsel for the applicant in rejoinder submits that insofar as complaint filed by the applicant under section 498A of Indian Penal Code is concerned, the said complaint is being pursued by the State of Maharashtra and not by the applicant. As and when the applicant is required to attend the said proceedings for the purpose of recording her evidence, the applicant would attend the said proceedings.

11. It is not in dispute that the applicant has been staying with her parents at Bhayandar. Though the distance between Bhayandar and Kalyan Court is about 55 km, it takes about three hours to reach from the place of the applicant to the Kalyan Court. The respondent has not disputed that the father of the applicant is retired and is unable to accompany the applicant for attending the proceedings at Kalyan. It is also not in dispute that the applicant as well as the respondent have filed two separate proceedings at Thane. The respondent has been attending the proceedings filed by the applicant at Thane.

12. Insofar as submission of the learned counsel for the respondent that the respondent is heart patient and is advised not to travel at Thane is concerned, the respondent has not filed any affidavit in reply to the present proceedings. The document tendered across the bar by the learned counsel for the respondent in support of the submission that the respondent is heart patient and was hospitalized is disputed by the learned counsel for the applicant.

13. In my view, in view of the aforesaid facts, the applicant has made out a case for transfer of the proceedings filed by the respondent.

14. Supreme Court as well as this court in catena of decisions has consistently taken a view that while considering an application filed under section 24 of the Code of Civil Procedure, 1908, convenience of the wife is required to be considered.

15. I, therefore, pass the following order :-

(a) The learned Civil Judge, Senior Division, Kalyan is directed to transmit the papers and proceedings of Marriage Petition No. 25 of 2016 to the Court of the learned Civil Judge, Senior Division, Thane.

(b) The parties as well as the learned Civil Judge, Senior Division, Kalyan and Civil Judge, Senior Division, Thane to act on the authenticated copy of this order.

(c) Both the parties are directed to appear before the learned Civil Judge, Senior Division, Thane on 19th December, 2016.

(d) Miscellaneous Civil Application No.81 of 2016 is allowed in the aforesaid terms. No order as to costs.

(R.D.DHANUKA, J.)