

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

MISC. CIVIL APPLICATION NO.78 OF 2016

Shri Samruddha Kiran Mohite. .. Applicant
Vs.
Sou. Ananya @ Amruta Samruddha Mohite. .. Respondent

Mr. Anand S. Patil for Applicant.
Mr. Tajpal Ingale for Respondent.

**ALONG WITH
MISC. CIVIL APPLICATION NO.126 OF 2016**

Sou. Ananya @ Amruta Samruddha Mohite. .. Applicant
Vs.
Shri Samruddha Kiran Mohite. .. Respondent

Mr. Tejpal Ingale for Applicant.
Mr. Anand S. Patil for Respondent.

**CORAM : R.D. DHANUKA, J.
DATE : 28th September 2016**

P.C.

. By consent of parties, both the applications were heard together and are being disposed of by a common order.

2. The applicant in Miscellaneous Civil Application No.78 of 2016 is the husband of the respondent who is the applicant in Miscellaneous Civil Application No.126 of 2016.

3. There is no dispute that the parties were married on 14th April 2012 at Satara. After the marriage, the parties decided to settle at

Mumbai and accordingly took a residential flat on rental basis at Sea Wood, Nerul, Navi Mumbai. On 8th July 2012, the wife went back to the matrimonial home at Navi Mumbai. It is the case of the wife that the husband refused entry to her in the said house. After repeated request, the husband however subsequently allowed the wife to enter the matrimonial home on 5th August 2012. The wife was issued a legal notice on 15th March 2013 for seeking divorce. The wife accordingly filed Hindu Marriage Petition No.31 of 2013 on 18th April 2013 in the Court of Civil Judge, Senior Division at Jaysingpur, Dist. Kolhapur against the husband under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights. Though the summons in the said proceedings are served upon the husband, the husband has not been attending the said proceedings. The husband filed Hindu Marriage Petition No.179 of 2013 against the wife before the Court of learned Civil Judge, Senior Division, Satara inter alia praying for divorce.

4. It is not in dispute that the husband is staying for last 12 years at Mumbai whereas the wife is staying at Jaysingpur, Kolhapur with her mother. Father of the wife has expired. Wife is unemployed. Husband is employed at Mumbai.

5. In so far as the husband is concerned, he has no objection if the proceedings filed by him at Satara continues at Satara and if the proceedings filed by wife in the Court at Jaysingpur, Kolhapur is transferred to the Court at Satara and if both the proceedings are heard together.

6. Learned counsel for the wife submits that the distance between the Satara and Jaisingpur is hardly 110 kms. It is submitted by the learned counsel for the husband that the distance between the Jaingsingpur and Mumbai is about 375 kms.

7. I have perused the affidavit-in-reply filed by the wife in Miscellaneous Civil Application No.78 of 2016. In paragraph 6 of the affidavit, it is averred that in view of the legal notice issued by the husband to the wife for seeking divorce within a period of 10 months after marriage, her father got shock and because of his untimely death in the month of February 2014, she was constrained to stay with her aged mother and younger brother to look after them. It is her case that nobody else is available to look after them. She has expressed readiness and willingness to join the matrimonial home of her husband at Sea Wood, Nerul, Navi Mumbai and ready for restitution of conjugal rights. Upon raising a query, learned counsel for the husband states that his client is not agreeable for restitution of conjugal rights.

8. It is not in dispute that the husband is employed and the wife is unemployed. In my view, since the husband though is staying at Mumbai is ready and willing to attend the proceedings at Satara, he can conveniently attend the proceedings at Jaisingpur, Kolhapur.

9. Supreme Court and the High Court in the catena of the decisions has held that convenience of the wife has to be considered by the Court while considering the application under Section 24 of the Code of Civil Procedure, 1908.

10. In my view, the wife has made out a case for transfer of the Hindu Marriage Petition No.179 of 2013 filed by the husband in the Court of Civil Judge, Senior Division, Satara to the Court of Civil Judge, Senior Division, Jaisingpur at Kolhapur as prayed. In my view, there is no merit in the Miscellaneous Civil Application No.78 of 2016 filed by the husband.

11. I therefore pass the following order :-

- (a) Miscellaneous Civil Application No.126 of 2016 is made absolute in terms of prayer clause (b);
- (b) Learned Civil Judge, Senior Division, Satara is directed to transmit the record and proceedings of divorce proceedings being Hindu Marriage Petition No.179 of 2013 filed by the husband to the Court of Civil Judge, Senior Division, Jaisingpur at Kolhapur expeditiously;
- (c) Learned Civil Judge, Senior Division, Jaisingpur at Kolhapur is directed to hear the proceedings filed by the wife as well as the husband together;
- (d) Parties are directed to appear before the learned Civil Judge, Senior Division, Jaisingpur at Kolhapur on 17th October 2016;
- (d) Miscellaneous Civil Application No.78 of 2016 is dismissed;
- (e) There shall be no order as to costs.

12. Parties as well as the learned Civil Judge, Senior Division, Satara to act on the authenticated copy of this order.

R.D. DHANUKA, J.