

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****MISC.CIVIL APPLICATION NO. 90 OF 2016****Mrs.Namrata Hemant Ghodeke****..... Applicant****VERSUS****Hemant Kishore Ghodke****..... Respondent**

Ms.Sharon Patole, i/b. Mr.Neelesh Kalantri for the Applicant.

None for the Respondent.

CORAM : R.D. DHANUKA, J.**DATE : 27th OCTOBER, 2016****P.C.**

Learned counsel appearing for the applicant states that the respondent is served and affidavit of service is filed. None appeared for the respondent. No affidavit in reply is filed.

2. By this application filed under section 24 of the Code of Civil Procedure, 1908 the applicant seeks transfer of the H.M.P. No.890 of 2015 filed before the learned Civil Judge, Senior Division, Kalyan to the Court of learned Civil Judge, Senior Division, Nashik.

3. The applicant was married to the respondent on 6th June, 2010. The male child was born out of the said wedlock on 27th February,2011. It is the case of the applicant that within a span of year of their marriage, the disputes cropped up between both the parties on one or the other reasons. Since 26th February,2012 the applicant has been residing with her parents at Nashik. It is her case that in view of the ill treatment given by the respondent and his family members, the applicant has filed a police complaint with Mahatma Phule Police Station, Kalyan.

4. The applicant has also filed a complaint at Nashik under the provisions of Domestic Violence Act against the respondent and his family members at Nashik (M.A.No.320 of 2013). During the pendency of the said case, the matter was referred to the mediator. The parties filed consent terms on 6th July,2015 whereby the applicant agreed to handover custody of her son to the respondent on the condition that the respondent would take responsibility of the said child including the expenses for his education and overall upbringing.

5. The applicant has been staying with her parents at Nashik. The distance between Nashik and Kalyan is about 150 km which takes 3 to 4 hours of journey either by train or by road. The parents of the applicant cannot attend the proceedings at Kalyan. The applicant has no other source of income and is dependent on her family members. It is the case of the applicant that the respondent however is earning sufficiently.

6. I have heard learned counsel for the applicant and I have perused the averments made in the miscellaneous civil application and also the annexures to the application.

7. In my view the applicant has made out a case for transfer of the proceedings filed by the respondent for the reasons recorded in the miscellaneous civil application. In catena of the decisions rendered by the Supreme Court and by this court, it has been held that while considering the application of the transfer under section 24 of the Code of Civil Procedure, 1908 a convenience of the wife has to be considered. I, therefore, pass the following order :-

- (a) Miscellaneous Civil Application No.90 of 2016 is made absolute in terms of prayer clause (a).

(b) Learned Civil Judge, Senior Division, Kalyan is directed to transfer H.M.P.No.890 of 2015 to the Court of learned Civil Judge, Senior Division, Nashik within four weeks from the date of communication of this order.

(c) Till the Learned Civil Judge, Senior Division, Kalyan transmit the papers and proceedings, he shall not pass any further order in the pending H.M.P.No.890 of 2015.

(d) Both the parties are directed to appear before the learned Civil Judge, Senior Division, Nashik on 5th December,2016.

8. The parties as well as the learned Civil Judge, Senior Division, Kalyan to act on the authenticated copy of this order. No order as to costs.

(R.D.DHANUKA, J.)