

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY*****CIVIL APPELLATE JURISDICTION*****MISC.CIVIL APPLICATION NO. 116 OF 2014****Manasvi Nilesh Kamble****..... Applicant****VERSUS****Nilesh Tukaram Kamble****..... Respondent**

Mr.Sachin Gite for the Applicant.

Mr.Dilip Shinde for the Respondent.

**CORAM : R.D. DHANUKA, J.****DATE : 20<sup>th</sup> DECEMBER, 2016****P.C.**

By this miscellaneous civil application filed under section 24 of the Code of Civil Procedure,1908 the applicant seeks transfer of the Petition No.A-1095 of 2014 filed by the respondent in the court of Family Court Bandra, Mumbai to the Family Court at Nashik.

2. The applicant and the respondent were married on 4<sup>th</sup> June, 2009 at Nashik. On 24<sup>th</sup> April, 2013, a male child is born out of the said wedlock. Learned counsel for the applicant submits that in view of the ill treatment and harassment of the respondent to the applicant, the applicant had shifted to her parents' house situated at Nashik. The child was 1 and ½ years old when she shifted to her parents house. The applicant has also filed a complaint against the respondent in the court of JMFC, Nashik under the provisions of Domestic Violence Act which proceedings are attended by the respondent.

3. The distance between the Nashik and the place of the residence of the

applicant is about 200 km. The applicant is unable to carry her child to attend the proceedings at Family Court Bandra, Mumbai. The parents of the applicant are unable to accompany her to the proceedings at Family Court Bandra, Mumbai. The respondent is earning handsome salary of Rs.25,000/- per month.

4. Learned counsel for the respondent on the other hand submits that the applicant is educated and is employed. He submits that though the respondent had called the applicant to come and stay with him in the matrimonial house, the applicant has refused. He submits that the respondent is not employed as on today and is carrying on small business at Nashik.

5. Learned counsel for the applicant is rejoinder submits that on one hand the respondent makes an offer that the applicant can come to the matrimonial house and on the other hand he is pursuing the proceedings filed by him against the applicant. He submits that the applicant had as a matter of fact visited the matrimonial home, but was not allowed to stay there.

6. At this stage, learned counsel for the respondent submits that the respondent may offer a lumpsum amount to the applicant for overall settlement to the matter.

7. There is no dispute that the applicant has been staying with her parents since 2013. A male child is born out of the said wedlock who is three years old as on today. The parents of the applicant are not keeping good health and thus are unable to accompany the applicant to attend the proceedings at Family Court at Bandra, Mumbai. The respondent is already attending the proceedings filed by the applicant at Nashik.

8. Insofar as submission of the learned counsel for the respondent that the applicant is employed is concerned, learned counsel for the applicant submits that the applicant is not employed and is fully depending upon her parents. The distance between the Family Court, Bandra and the place of the residence of the applicant is around 200 km.

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

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

- (a) Misc.Civil Application No.116 of 2014 is made absolute in terms of prayer clause (a).
- (b) Family court at Bandra, Mumbai is directed to transmit the papers and proceedings of the Petition No.A-1095 of 2014 to the Family Court at Nashik expeditiously.
- (c) The parties as well as the two courts described in the prayer clause (a) to act on the authenticated copy of this order.
- (d) Both the parties are directed to appear before the Family Court at Nashik on 23<sup>rd</sup> January, 2017.

11. Misc. Civil Application No.116 of 2014 is disposed of in the aforesaid terms. No order as to costs.

**(R.D.DHANUKA, J.)**