

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****MISC.CIVIL APPLICATION NO. 246 OF 2016****Renuka Nilesh Wadekar****..... Applicant****VERSUS****Nilesh Shiva Wadekar****..... Respondent**

Mr.Dheeraj Panchange, i/b. Mr.Hitesh Shah for the Applicant.

CORAM : R.D. DHANUKA, J.**DATE : 23rd DECEMBER, 2016****P.C.**

Learned counsel appearing for the applicant states that the respondent is served. Affidavit of service is already 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 Special Marriage Petition No.02 of 2016 filed by the respondent in the Court of District Judge, Dhule to the Competent Court at Nashik.

3. The applicant and the respondent were married on 2nd April, 2014 at Nashik. It is the case of the respondent that the respondent has requested the applicant to stay with her parents in view of the sister of the respondent who was divorced at the same time when their marriage was solemnized and had assured the applicant that he will take the applicant in the matrimonial home after some time. The respondent however never turned up to take the applicant to the matrimonial home. The applicant has filed a petition being No.47 of 2016 against the respondent for

Restitution of Conjugal Rights in the Family Court at Nashik. The respondent has filed Special Marriage Petition No.02 of 2016 in the Court of learned District Judge, Dhule. The father of the applicant who used to accompany the applicant on few occasions for attending the proceedings at Dhule was bedridden and has now expired. The applicant is unemployed and is totally dependent upon her mother.

4. 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. For the reasons aforesaid, 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.

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

(a) Misc.Civil Application No.246 of 2016 is made absolute in terms of prayer clause (a).

(b) The learned District Judge, Dhule is directed to transmit the papers and proceedings of the Special Marriage Petition No.02 of 2016 to the Family Court, Nashik expeditiously.

(c) The Petition No.47 of 2016 filed by the applicant for restitution of the conjugal rights in the Family Court, Nashik and Special Marriage Petition No.02 of 2016 filed by the respondent which is transferred by this order be heard together.

(d) The parties as well as the District Court, Dhule and

Family Court, Nashik to act on the authenticated copy of this order.

(e) Both the parties are directed to appear before the Family Court Nashik on 30th January, 2017.

6. Misc. Civil Application No.246 of 2016 is disposed of in the aforesaid terms. No order as to costs.

(R.D.DHANUKA, J.)