

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****MISC. CIVIL APPLICATION NO.198 OF 2015****Sau. Nidhi Kishor Thombare****..... Applicant****VERSUS****Kishor M. Thombare****..... Respondent**

Mr.Sagar Talekar for the Applicant.

Mr.Vijay Upadhyay, i/b. Mr.Ganesh Andre for the Respondent.

CORAM : R.D. DHANUKA, J.**DATED : 8th FEBRUARY, 2016****P.C.**

By this application, the applicant seeks transfer of the Hindu Marriage Petition No.A-997 of 2015 filed before the learned Family Court, Mumbai Bandra to the Court of Learned Additional Civil Judge Senior Division, Raigad.

2. The marriage between the applicant and respondent was solemnized on 11th March, 2012 at Taluka Sudhagad, Dist.Raigad. It is the case of the applicant that both the parties started residing at residence of respondent at Bahirampada, Sudhagad, Raigad. The respondent was working at Mumbai and thus obtained a house at Kandivali on leave and licence basis. In view of the dispute having arisen between the parties, the applicant shifted to the residence of her parents.

3. The appellant is presently staying at her matrimonial house at Bahirampada in the joint family. The appellant is a housewife and having two years son Aditya who is not keeping well. The appellant has to often visit to the doctor for medical treatment of her son. The distance between the place of the residence of the

applicant and the Family Court at Mumbai is about 150-200 kms. It is the case of the applicant that the applicant is not able to carry two years old child to Mumbai for attending the court proceedings.

4. Learned counsel for the applicant states that the respondent is working and is earning more than Rs.30,000/- per month and does not pay any maintenance to the applicant and for the child despite the order passed by the learned Judicial Magistrate, First Class, Pali.

5. Learned counsel appearing for the respondent on the other hand submits that there is no court of Additional Court of Civil Judge Senior Division at Mangaon, Raigad. It is stated on affidavit that if at all the said petition which is pending before the Family Court at Bandra is to be transferred then it has to be transferred to the Court of the learned Additional Civil Judge Senior Division Alibaug, Raigad. It is submitted that the respondent is also suffering from the disease due to which the respondent is not able to stand for more than 15 minutes. In support of this submission, learned counsel placed reliance on a medical certificate dated 29th September, 2015.

6. Since copy of the affidavit in reply is tendered across the bar, learned counsel for the applicant is not in a position to verify the authenticity of the doctor certificate annexed to the affidavit in reply.

7. Learned counsel for the applicant in rejoinder submits that he has no objection if the proceedings are transferred to the Court of learned Civil Judge Senior Division Alibaug, Raigad as suggested in the affidavit in reply filed by the respondent.

8. Learned counsel for the respondent has not disputed the fact that the appellant has been staying in her matrimonial house at Mangaon, Raigad and has two years child. The respondent has also not disputed that the applicant is not working and has no source of income and the respondent has not paid any maintenance to the applicant or for the child. It is the case of the applicant that the child is not keeping good health and is often taken to the doctor for medical assistance. In my view, the reasons recorded in the miscellaneous civil application and on hearing learned counsel for both the parties, the applicant has made out a case for transfer of the proceedings filed by the applicant before the Family Court Bandra to the Civil Judge Senior Division Alibaug, Raigad.

9. Insofar as medical certificate relied upon by the learned counsel for the respondent and is forming part of the affidavit in reply is concerned, the said certificate is dated 29th September, 2015. A perusal of the alleged certificate indicates that the doctor has advised the respondent to sleep in the lateral position with a pillow. Learned counsel for the respondent is not in a position to explain as to how the respondent will not be able to travel to the Court at Alibaug if the matter is transferred.

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

(a) Learned Family Court Bandra is directed to transmit the papers and proceedings of Hindu Marriage Petition No.A-997 of 2015 to the Court of learned Civil Judge, Senior Division, Alibaug, Raigad expeditiously.

(b) Learned Civil Judge, Senior Division, Alibaug, Raigad shall make an endeavour to dispose of the proceedings

expeditiously.

(c) Miscellaneous civil application is disposed of in the aforesaid terms. No order as to costs.

[R.D. DHANUKA, J.]