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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO.232 OF 2015

Bhagyashree A. Ahiwale ...Applicant

V/s.

Amit H. Ahiwale ...Respondent

Ms.Smita Mane for the Applicant.

Ms.Savita Prabhune for the Respondent.

CORAM : R.D. DHANUKA, J.
DATE : 21ST DECEMBER, 2016.

P.C. :-

1. By this application filed under section 24 of the Code of Civil Procedure, 1908, the applicant seeks transfer of Hindu Marriage Petition No.376 of 2014 filed by the respondent before the learned Civil Judge, Senior Division, Malegaon, Nashik to the Court of Civil Judge, Senior Division, Baramati, Pune.
2. The applicant and the respondent were married on 1st May, 2013 at Pune. A daughter is born out of the said wedlock on 23rd June, 2014.
3. It is the case of the applicant that in view of the harassment to the applicant by the respondent and his mother and in

view of the illegal demand of dowry and mental and physical torture on their part, the applicant had to leave the matrimonial house and is continuously residing with her old aged parents.

4. Learned counsel appearing for the applicant states that the applicant is unemployed. A child of the parties is about 2 and half years old. The distance from Malegaon, Nashik to Baramati, Pune is about 350 K.M. The applicant is unable to carry her child for attending the proceedings. The parents of the applicant are unable to accompany her to attend the matter. The applicant herself has no source of income and is totally dependent upon her parents.

5. The applicant has filed a separate proceedings against the respondent for restitution of conjugal rights before the learned Civil Judge, Senior Division, Baramati, Pune. The respondent had attended the said proceedings once. It is submitted by the learned counsel that in these circumstances, it is inconvenient for the applicant to attend the proceedings at Malegaon, Nashik.

6. Learned counsel for the respondent on the other hand opposed this application on the ground that the respondent had given an undertaking to MSEB while accepting the job to the effect that the respondent would take care of his mother and handicapped brother and thus cannot leave Malegaon, Nashik for attending the proceedings, if transferred by this Court to the Court of learned Civil

Judge, Senior Division, Baramati, Pune. She submits that the respondent does not get any leave from his employer for attending the Court proceedings. It is submitted that the applicant and her family members have political influence and there are threats of life to the respondent if the respondent is directed to appear in the proceedings before Baramati Court, Pune.

7. It is not in dispute that the distance between Malegaon, Nashik and Baramati, Pune is about 350 K.M. There is also no dispute that a child born out of the said wedlock to the applicant and the respondent is 2 and half years old. The applicant is unemployed and is totally dependent upon the parents. The parents of the applicant are unable to accompany the applicant for attending the proceedings at Malegaon, Nashik. It is not in dispute that the respondent has been employed with MSEB and is earning sufficiently. The respondent has also attended the proceedings filed by the applicant for restitution of conjugal rights at Baramati, Pune once.

8. Insofar as the submission of the learned for the respondent that the respondent had given an undertaking to MSEB to take care of his mother and handicapped brother and thus it will be inconvenient for the respondent to attend the proceedings if transferred to Baramati, Pune is concerned, the presence of the

respondent may be required in the Court at Baramati, Pune only as and when the evidence would be recorded. It is not the case of the respondent that there is no other family member in the house to look after the mother and handicapped brother.

9. Insofar as the submission of the learned counsel for the respondent that the applicant and his family members are having political influence and there are threats to the life of the respondent, if he is directed to attend the proceedings in the Court of learned Civil Judge, Senior Division, Baramati, Pune is concerned, learned counsel for the applicant denies that any such threats were ever given by the applicant to the respondent or would be given to the respondent in future if he attends the proceedings at Baramati, Pune. The statement of the learned counsel for the applicant is accepted.

10. If the applicant gives any such threats to the respondent, the respondent can always approach the Court or police for redressal of such grievance.

11. It is held by the Supreme Court in catena of decisions that while deciding the application filed under section 24 of the Code of Civil Procedure, 1908, convenience of the wife has to be considered by the Court. The principles laid down by the Supreme Court are binding on this Court. I am respectfully bound by the judgment of the Supreme Court.

12. In my view, the applicant has thus made out a case for transfer of the proceedings filed by the respondent in the Court of Civil Judge, Senior Division, Malegaon, Nashik to the Court of Civil Judge, Senior Division, Baramati, Pune.

13. I therefore, pass the following order :-

a). Miscellaneous Civil Application No.232 of 2015 is made absolute in terms of prayer clause (a).

b). Learned Civil Judge, Senior Division, Malegaon, Nashik is directed to transmit the papers and proceedings in Hindu Marriage Petition No.376 of 2014 to the Court of Civil Judge, Senior Division, Baramati, Pune expeditiously.

c). The parties as well as the two Courts described in prayer clause (a) of the miscellaneous civil application to act on the authenticated copy of this order.

d). The parties are directed to appear before the Civil Judge, Senior Division, Baramati, Pune on 30th January, 2017.

e). Learned Civil Judge, Senior Division, Baramati, Pune shall hear Hindu Marriage Petition No.376 of 2014 filed by the respondent and Marriage Petition No.28 of 2015 filed by the applicant together.

f). The parties are directed to co-operate with each other and also with the learned Civil Judge, Senior Division, Baramati, Pune to

dispose of the aforesaid two proceedings expeditiously.

g). No order as to costs.

(R.D. DHANUKA, J.)