

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

MISCLLENOUS CIVIL APPLICATION NO.196 OF 2015

Rupali Uday Sirsat	..Applicant
V/s.	
Mr.Uday Padmakar Sirsat	.. Respondent

**WITH
MISCLLENOUS CIVIL APPLICATION NO.196 OF 2016**

Mr.Uday Padmakar Sirsat	..Applicant
V/s.	
Rupali Uday Sirsat	.. Respondent

Mr.Satyajeet Dighe for the applicant in MCA No.196 of 2015
and for the Respondent in MCA No.196 of 2016.

Ms.Shama Mvlla i/by Ms.Jay & Co. for the Respondent in MCA
No.196 of 2015 and for the Applicant in MCA No.196 of 2016.

CORAM : R.D. DHANUKA, J.

DATE : 15th NOVEMBER, 2016.

P.C.

1. By consent of parties both these Miscellaneous Civil Applications were heard together and are disposed of by a common order.

2. Heard both the learned counsel.

3. The Miscellaneous Civil Application No.196 of 2015 is filed by the Wife inter-alia praying for transfer of HMP No.A-271 of 2015 pending before the Family Court at Nashik to the Family Court at Bandra and inter-alia praying for clubbing of both the matters. Miscellaneous Civil Application No.196 of 2016 is filed by the Husband inter-alia praying for transfer of Petition No.A-2223 of 2012 filed by the wife which is pending before the learned Family Court, Bandra to the Family Court at Nashik Road, Nashik wherein the petition for restitution of conjugal Rights filed by the Husband is pending.

4. The applicant in Miscellaneous Civil Application No.196 of 2015 was married with the respondent at Nashik on 12th December 2008. It is the case of the applicant that the marriage between her and the respondent never consummated. In view of the alleged cruelty the applicant inflicted verbally and physically on the applicant and in view of the fact that the respondent is addicted to alcohol, the applicant left her matrimonial house and has been staying in Mumbai in Government Quarter. Applicant is working as API in State Intelligence Department and has been working in Mumbai since last several years. The learned counsel for the applicant invited my attention to the averments made in the

Miscellaneous Civil Application and also the annexures thereto. He submits that the petition filed by the applicant inter-alia praying for the divorce against the respondent, is at advance stage. He submits that evidence of the applicant-wife is already closed. It is submitted that considering the nature of the duties and functions of the applicant, she has to stay away from the house on several occasions. It is not convenient to the applicant to attend the proceedings filed by the Respondent for Restitution of Conjugal Rights which is filed after 3 years of the application for seeking divorce filed by the applicant. He submits that the Respondent has filed proceedings for Restitution of Conjugal Rights with malafide intention to harass the applicant and to delay the outcome of the divorce proceedings filed by the applicant.

5. The learned counsel appearing for the applicant invited my attention to the Roznamma of the proceedings filed by the applicant against the respondent. He submits that the conduct of the Respondent has been deprecated by the Family Court at Bandra on number of occasions. He submits that the Respondent has also filed police complaint against the Respondent with the local police Station at Nashik.

6. The learned counsel for the Respondent on the other hand submits that the applicant has filed a complaint against Respondent under Section 498A of the Indian Penal Code and also a separate complaint which is now registered as FIR II/3105/2015 for the offence punishable under Section 66A of the Information Technology Act, 2000 with Bhadrakali Police Station at Nashik City. She submits that the Respondent has also filed a separate application inter-alia praying for Restitution of Conjugal Rights at Nashik. She submits that since three proceedings are pending at Nashik against the applicant-wife, it will be more convenient if the proceedings filed by the wife before the Family Court At Bandra are transferred to the Family Court at Nashik.

7. It is not in dispute that the proceedings filed by the applicant against the respondent-husband inter-alia praying for divorce under the provisions of the section 13(1)(ia) of the Hindu Marriage Act, 1956 is pending before the Family Court at Bandra since 2012. The learned counsel for the Respondent has not disputed that the Respondent is attending the said proceedings and the evidence of the applicant is closed.

8. The learned counsel appearing for the applicant-wife in

rejoinder submits that in so far as the two complaints filed by the applicant-wife against the Respondent in Nashik, in view of the territorial jurisdiction are concerned, these complaints are converted in FIR and are pursued by the State Government. He further submits that the proceedings filed by the respondent against the applicant at Nashik is filed with the malafide intention to harass the applicant.

9. It is not in dispute that the respondent-husband has been attending the proceedings filed by the wife at Bandra. In so far as the proceedings filed by the respondent for Restitution of Conjugal Rights are concerned, the said proceedings are filed after three years after filing of the divorce proceeding by the Applicant-wife for seeking divorce before the Family Court Bandra. In my prima-facie view the proceedings filed by the Respondent for Restitution of Conjugal Rights after three years of the applicant-wife having filed application for divorce is with a view to harass the applicant and cause hardship to the applicant. The two criminal complaints are filed at Nashik, in view of the territorial jurisdiction at Nashik.

10. It is not in dispute that the applicant is working at

Mumbai with the Police Department. Considering the nature of the duties of applicant, the applicant does not get leave frequently. The Respondent on the other hand is working in a private firm. In view of these facts, in my view the applicant has made out a case for transfer of the proceedings filed by the Respondent. In my view there is no substance in the Miscellaneous Civil Application filed by the Respondent-husband inter alia praying for transfer of the divorce proceedings filed by the applicant-wife. I therefore, pass following order.

ORDER

- (a) Miscellaneous Civil Application No.196 of 2015 is made absolute in terms of prayer clause (A).
- (b) Miscellaneous Civil Application No.196 of 2016 is dismissed.
- (c) The Family Court Nashik is directed to transmit the records and proceedings of HMP No.A-271 of 2015 to the Family Court at Bandra, Mumbai expeditiously.
- (d) The HMP No.A-2223 of 2012 and HMP No.271 of 2015 to be heard together.
- (e) The respondent is directed to attend both the proceedings at Bandra without seeking any

unnecessary adjournment.

(f) Both the parties are directed to co-operate with each other and the Family Court, Bandra for expeditious disposal of the proceedings.

(g) Both the courts as well as parties to act on authenticated copy of this order.

(h) The applicant-wife and the Respondent-husband are directed to appear before the Family Court at Bandra on the adjourned date i.e. 05th December 2016 without fail.

(i) Hearing of the HMP No.A-271 of 2015 and HMP No.A-2223 of 2012 is expedited.

(j) No order as to costs.

(R.D. DHANUKA, J.)