

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****MISC.CIVIL APPLICATION NO. 288 OF 2015****Varsha Vasant Masalkhamb****..... Applicant****VERSUS****Vasant Shrimant Masalkhamb****..... Respondent**

Ms.Ayodhya Patki, i/b. Mr.Nitesh V.Bhutekar for the Applicant.

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

Learned counsel appearing for the applicant states that the respondent has been served. None appeared for the respondent when the matter was called out. Learned counsel appearing for the applicant states that affidavit of service is already filed. Statement is accepted. 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 various proceedings described in prayer clause (A) of the miscellaneous civil application to the other courts described in the said prayer.

3. The applicant and the respondent were married on 25th May, 2004 at Jalgaon. Out of the said wedlock a daughter and a son were born on 29th June, 2007 and 19th September, 2009 respectively.

4. It is the case of the applicant that in view of the misbehaviour of the respondent with the applicant and continuous harassment, the applicant is staying

with her mother and with the children at Kalyan.

5. Learned counsel appearing for the applicant submits that the applicant is unemployed and is unable to carry her two minor children with her to attend the proceedings from Kalyan to various other places where the proceedings are filed by the respondent.

6. It is stated that the respondent is always chasing the applicant while she goes to Pune station from Court and has been abusing her by harsh words. The respondent also beats the applicant and has threatened her of dire consequence. The applicant has also lodged FIR with the Pune Railway Police against the respondent. The applicant has no source of income. The respondent is already appearing in the proceedings filed by the applicant against the respondent at Kalyan. The respondent is getting pension and can travel from Pune to Kalyan.

7. With the assistance of the learned counsel for the applicant, I have perused the averments made in the miscellaneous civil application and the annexures thereto. There is no dispute that a daughter and a son of the applicant and respondent are minor. The applicant is unemployed and is staying with her mother. The applicant has no source of income and is dependent upon her mother. It is not convenient for the applicant to attend the proceedings with her two minor children from Pune to Kalyan Court.

8. 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.

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

(a) Misc.Civil Application No.288 of 2015 is made absolute in terms of prayer clause (a).

(b) The learned Judicial Magistrate First Class, Pune is directed to transmit the papers and proceedings of the Domestic Violence Miscellaneous Application No.5563 of 2014 to the Court of learned Judicial Magistrate, First Class, Kalyan expeditiously.

(c) The learned Civil Judge, Senior Division, Pune is directed to transmit the papers and proceedings of the Marriage Petition No.744 of 2014 to the Court of learned Civil Judge, Senior Division, Kalyan expeditiously.

(d) The learned Additional District and Session Judge, Pune is directed to transmit the papers and proceedings of the Civil Misc. Application No.592 of 2015 to the court of learned Additional District and Session Judge, Thane expeditiously.

(e) The learned Civil Judge, Senior Division, Pune is directed to transmit the papers and proceedings of Defamation Case No. 18309 of 2014 to the court of learned Civil Judge, Senior Division, Kalyan expeditiously.

(f) The learned Additional District and Session Judge, Pune is directed to transmit the papers and proceedings of D.V.Appeal No.58 of 2014 to the Court of learned Additional District and Session Judge, Thane expeditiously.

(g) The parties as well as the courts described in the prayer clause (a) to act on the authenticated copy of this order.

(h) The applicant is directed to convey this order to the respondent and also to the courts described in prayer clause (a) for compliance.

10. Misc. Civil Application No.288 of 2015 is disposed of in the aforesaid terms. No order as to costs.

(R.D.DHANUKA, J.)