

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****MISC.CIVIL APPLICATION NO. 245 OF 2015****Nikeeta Chirag Waghela****..... Applicant****VERSUS****Chirag M. Waghela****..... Respondent**

Mr.Ameya Tamhane, i/b. Ms.Seema Sarnaik 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. No affidavit in reply is filed.

2. By this application filed under section 24 of the Code of Civil Procedure, 1908 read with section 21A of the Hindu Marriage Act, 1955, the applicant seeks transfer of the M.P.No.425 of 2015 from the Court of learned Civil Judge, Senior Division, Thane to the Family Court, Bandra, Mumbai.

3. The applicant and the respondent were married on 18th February, 2004. The applicant is residing with her daughter at Mira Road, Thane with her brother since 17th May, 2015. The applicant has filed the proceedings for divorce on 24th June, 2015 being Divorce Petition No.1624 of 2015 before the Family Court, Bandra against the respondent. The respondent has filed Marriage Petition No.425 of 2015 for divorce against the applicant and for interim and permanent custody under section 6 and section 13 of the Hindu Minority and Guardianship Act, 1956 and for other reliefs in the Court of learned Civil Judge, Senior Division, Thane.

4. Learned counsel appearing for the applicant invited my attention to section 21-A(2)(b). He submits that since the petition for divorce is filed by the applicant first in point of time, in view of the said provision, the petition filed by the respondent shall be transferred to the Family Court, Bandra and the same shall be heard alongwith the proceedings filed by the applicant.

5. A perusal of section 21(A) (2)(b) clearly indicates that if the petitions are presented to different District Courts, the petition presented later shall be transferred to the District Court in which the earlier petition was presented and both the petitions shall be heard and disposed of together by the District Court in which the earlier petition was presented.

6. A perusal of the record indicates that the applicant has filed her divorce petition against the respondent first. In view of section 21(A)(2)(b) of the Hindu Marriage Act, 1955, the proceedings filed by the respondent thus have to be transferred to the Family Court, Bandra, to be heard alongwith the petition filed by the applicant.

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

(a) Misc.Civil Application No.245 of 2015 is made absolute in terms of prayer clauses (a) to (d).

(b) Learned Civil Judge, Senior Division, Thane is directed to transmit the papers and proceedings of M.P. No.425 of 2015 to the Family Court, Bandra expeditiously.

(c) Both the proceedings shall be heard together by the

Family Court, Bandra

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

8. Misc. Civil Application No.245 of 2015 is disposed of in the aforesaid terms. No order as to costs.

(R.D.DHANUKA, J.)