

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****MISC.CIVIL APPLICATION NO. 252 OF 2014****Mrs.Deepa Kiran Shetty****..... Applicant****VERSUS****Kiran Prabhakar Shetty****..... Respondent**

Ms.Yogita Deshmukh for the Applicant.

Ms.Kokila Venkatachalam, a/w. Ms.Indrayani Koparkar for the Respondent.

CORAM : R.D. DHANUKA, J.**DATE : 22nd NOVEMBER, 2016****P.C.**

By this miscellaneous civil application filed under section 24 of the Code of Civil Procedure,1908 the applicant seeks transfer of the Marriage Petition No.A-2688 of 2014 filed by the respondent for restitution of the conjugal rights before the Family VIIth Court, Bandra East to the Family Court of Senior Division, Palghar.

2. The applicant and the respondent were married on 22nd February, 2004. The respondent has filed the marriage petition in the year 2014 inter alia praying for restitution of conjugal rights against the applicant in the Family 4th Court, Bandra (E). The applicant has filed proceedings under Domestic Violence Act against the respondent at Palghar.

3. Learned counsel appearing for the applicant submits that out of the wedlock of the applicant and the respondent, two daughters are born. The elder daughter is about 11 years old and the younger daughter is about 8 years old. The applicant is

employed as a teacher with a private coaching class. The distance between Palghar and Bandra is about 120 km. She submits that it takes about 2 and ½ hours for each side of the travelling. She submits that the respondent is earning Rs.1 lakh per month. She submits that it is not convenient for the applicant to carry two children for attending the proceedings at Bandra. It is submitted that the respondent has been attending the proceedings filed by the applicant at Palghar.

4. Learned counsel for the respondent on the other hand submits that the respondent had filed a proceedings for restitution of conjugal rights in the year 2014 and the said proceedings have been attended by the applicant from time to time in last two years. She submits that those proceedings are filed by the applicant in this court in the year 2014, the applicant did not apply for stay of the proceedings. She submits that the applicant did not attend the trial court proceedings for cross examining the respondent and thus the trial court has already passed an order for 'no cross'. The applicant has now filed an application for setting aside the said order passed by the learned trial court. She submits that the applicant has been providing access of the two daughters to the respondent at Bandra and or in the vicinity of Mumbai. She submits that the respondent is paying the sufficient amount to the applicant on each day of providing access by the applicant of two daughters to the respondent. She submits that the applicant has deliberately stopped attending proceedings before the Family Court at Bandra though she was continuously attending the said proceedings for two years and thus at this stage no relief should be granted to the respondent. She submits that if the applicant applies for any travelling expenses before the Family Court at Bandra for attending the said proceedings, her client would agree to pay the reasonable travelling charges to the applicant.

5. It is not in dispute that the Marriage Petition No.A-2688 of 2014 filed by the respondent for restitution of conjugal rights against the applicant is pending since 2014. Learned counsel appearing for the applicant does not dispute that her client had been attending the said proceedings before the Family Court at Bandra for last two years. She has however stopped attending the proceedings recently and did not cross examine the respondent. Learned counsel for the applicant does not dispute that whenever the excess is provided of the two daughters to the respondent, the respondent has been paying a sum of Rs.4,000/- to the applicant.

6. Though the present proceedings are filed in this court in the month of November 2014 till date, there is no stay of the proceedings filed by the respondent before the Family Court at Bandra. The respondent is ready and willing to pay the reasonable travelling charges if any, application is made by the applicant before the Family Court for attending the proceedings in that court.

7. The learned trial judge has already passed an order for no cross in view of the applicant remaining absent for the purpose of cross examination of the respondent. The application filed by the applicant for setting aside the said order of no cross is pending. In these circumstances, I am not inclined to transfer the marriage petition filed by the respondent which is pending before the Family Court, Bandra since 2014 at this stage. I, therefore, pass the following order :-

(a) Misc.Civil Application No.252 of 2014 filed by the applicant is dismissed. Hearing of the Marriage Petition No.A-2688 of 2014 is expedited.

(b) Both the parties are directed to co-operate with each

other and with the learned Family Court, Bandra in expeditious disposal of the said marriage petition filed by the respondent.

(c) The Family Court 4th Bandra East shall make an endeavour to dispose of the Marriage Petition within six months from today.

(d) There shall be no order as to costs.

(R.D.DHANUKA, J.)