

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Misc.Civil Application NO. 21 OF 2016

Smt. Madhavi Chetan Arne W/o.

Shri.Chetan Dinkar Arne

...Petitioner

Versus

Shri Chetan Dinkar Arne

...Respondent

*Mr.Prathamesh Avinash Gokhale, for the Petitioner.**None for the Respondent.*

CORAM: G. S. KULKARNI, J.**DATED: 26th April, 2016**

PC:-

1. Heard the learned Counsel for the Petitioner. None appears for the Respondent though served.

2. By an order dated 29 March 2016 this Court had recorded that the Respondent was served by a private notice pursuant to the order dated 1 February 2016 and thereafter pursuant to the order dated 7 March 2016 the Court notice is also served. However, on 29 March 2016, none appeared for the Respondents. This application was accordingly adjourned to 20 April 2016 and the parties were put to notice that this application would be taken up for disposal on the adjourned date of hearing irrespective of whether the Respondent enters its appearance. The order

dated 29 March 2016 was directed to be communicated to the Respondents before the adjourned date of hearing as also a liberty was granted to the Petitioner/Applicant to inform the order of the Court to the Advocate representing the Respondent, before the Family Court at Pune. Learned Counsel for the Applicant submits that accordingly the Advocate appearing for the Respondent has been informed of the order dated 29 March 2016. Thus the Respondent is not represented. It is quite clear that the Respondent is not interested in contesting this application. This application is taken up for hearing on the above background.

3. This is an application by the Applicant-wife under Section 24 of the Code of Civil Procedure whereby the Applicant has prayed that the proceedings of Petition No.1122 of 2012 filed by the Respondent before the Family Court at Pune under Section 13(1)(i)(a) of the Hindu Marriage Act,1955 be transferred to the Family Court at Nashik.

4. Learned Counsel for the Applicant submits that the Applicant and the Respondent were married on 24 June 2007 at Nashik. The couple has a daughter of six and half years age who is presently residing alongwith the Applicant. Disputes arose between the parties in April,2012. On 13 September 2012 the Petitioner filed a petition for restitution of conjugal rights under Section 9 of the Hindu Marriage Act,1955 being Petition No.393 of 2012 before the Family Court at Nashik. After the

summons of the said petition was received by the Respondent, the Respondent filed a counter petition for divorce under Section 13(1)(i)(a) of the Hindu Marriage Act, 1955, being PA No.1122 of 2012 before the Family Court at Pune. The summons in respect of the petition of the Respondent dated 10 October 2012 was received by the Applicant. It is submitted that the petition filed by the Applicant before the Family Court at Nashik is prior in time.

5. It is submitted that in the year 2014, the Applicant had also filed an application under Section 125(3) of the Code of Criminal Procedure being Application No.107 of 2014 which is also pending before the Family Court at Nashik. It is submitted that the Respondent is attending both these proceedings instituted by the Applicant before the Family Court at Nashik. The proceedings before the Family Court at Nashik as also the proceedings before the Family Court at Pune are at the stage of recording of evidence.

6. Learned Counsel for the Applicant would submit that she is required to look after her daughter who is six and half years of age. It is also submitted that she is also suffering from certain ailments and a medical certificate to that effect has been annexed to the paper book at page 79 which is dated 5 December 2015. This position is not disputed by

the respondent. It is further submitted that the Applicant is not earning and residing with her own parents at Nashik and, therefore, she has no independent source of income.

7. Having heard the learned Counsel for the Applicant and having perused the documents as placed on record, it appears that there is much substance in the contention as urged on behalf of the Applicant. The averments as made by the Applicant in the application stand uncontroverted as the respondent has chosen not to contest this application. The Applicant is required to look after her daughter who is six and half years of age. Further there are two proceedings which are already pending before the Family Court at Nashik as observed above. The petition filed by the Applicant under Section 9 of the Hindu Marriage Act was instituted prior in time to the petition filed by the Respondent-husband before the Family Court at Pune. The balance of convenience is in favour of the Applicant.

8. Taking into consideration the above facts and circumstances, it would be in the interest of justice that this application is required to be allowed. Accordingly, the following order is passed:-

ORDER

(i) The proceedings of Petition PA.No.1122 of 2012 pending before the Family Court No.4 at Pune are directed to be transferred to the Family

Court at Nashik within a period of two weeks from today.

(ii) Office is directed to forward intimation of this order to the Registrar, Family Court at Pune.

(iii) After the proceedings are transferred, the parties are directed to appear before the Family Court at Nashik on 8 June 2016.

6. Miscellaneous Application is disposed of in the above terms.
No order as to costs.

7. Parties to act on the authenticated copy of the order.

(G. S. KULKARNI,J.)