

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

MISCELLANEOUS CIVIL APPLICATION NO. 68 OF 2016

Sau. Priya Haresh Bhandarkar,
age : 31 years, occup. Household,
R/o c/o Smt. Bebabai Eknath Shimpi,
Kholgalli, Bhadgaon, Tq. Bhadgaon,
Dist. Jalgaon

.. Applicant

versus

Haresh Vishwanath Bhandarkar,
Age : 36 years, occup. service,
R/o Pawan Dham Janki, Room No.1,
Kolivali ?Gandhari, East Kalyan,
Tq. Kalyan, Dist. Thane

.. Respondent

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Mr. Harshal P. Randhir, Advocate for applicant
Mr. Ajay G. Talhar, Advocate for respondent

CORAM : SUNIL P. DESHMUKH, J.
DATE : 9th January, 2017

ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith. Heard learned counsel for parties by consent.

2. This is miscellaneous civil application by wife, invoking powers under section 24 of the Code of Civil Procedure, 1908 to have transfer of proceedings bearing marriage petition no. 46 of 2016 by husband pending before the Civil Judge, Senior Division, Kalyan to a court at Jalgaon.

3. The applicant is wife of respondent and from the wedlock two children have born, one is contended to be maintained by husband and other by the applicant.

4. Learned counsel for applicant submits that the applicant has no source of income worth the name and has been leading a very difficult life. Additionally, she has to maintain a child which is with her. The circumstances are such that it is difficult for her to attend to the proceedings at Kalyan filed by respondent-husband. It has further been referred to that since 2011, the respondent has been attending to the proceedings filed by applicant-wife at Jalgaon bearing criminal miscellaneous application no. 127 of 2011 seeking maintenance and further that two revisions before the sessions court at Jalgaon, against the order granting maintenance in aforesaid criminal miscellaneous application, have been filed by the parties, one by wife for enhancement of maintenance and other by husband for setting aside the maintenance order. He submits that husband is working and is employed and has sufficient source of income and has been attending to the proceedings at Jalogaon and as such requests for transfer of proceedings from Kalyan court to court at Jalgaon.

5. Learned counsel relies on an order passed by the supreme court in the case of *Sumita Singh vs. Kumar Sanjay and another*, reported in (2001) 10 SCC 41 wherein it has been observed that wife's convenience should be looked at.

6. Learned counsel for the respondent, on the other hand, contends that respondent is reported to have been serving now at Nasik and further that respondent has to maintain his ailing mother who is suffering cancer.

7. Looking at the medical certificate concerning the ailment which has been placed reliance on, it is apparent that the certificate is of the period three years before i.e. of 2012. In any event, respondent has been attending to the proceedings at Jalgaon. Learned counsel further has not been able to place on record any material indicating that, as contended by applicant, he is working at Nasik.

8. In view of aforesaid, it appears to be expedient to lean in favour of the applicant since circumstances do show that respondent has already been attending the proceedings at Jalgaon, albeit it is stated that respondent has to bear a child and ailing mother. It will have to be considered that respondent is also employed in government service and has some earning source.

9. As such miscellaneous civil application is allowed. Divorce proceedings bearing marriage petition no. 46 of 2016 filed by respondent-husband in the court of Civil Judge, Senior Division, Kalyan shall stand transferred to competent court at Jalgaon.

10. Rule is made accordingly absolute. Miscellaneous civil application stands disposed of.

SUNIL P. DESHMUKH,
JUDGE

pnd