

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
MISCELLANEOUS CIVIL APPLICATION NO. 89 OF 2015

Dr. Daivashala Rahul Deshmukh,
@ Daivashala Dilip Kawade

... Applicant

Versus

Dr. Rahul Shivajirao Deshmukh

... Respondent

Mr. S.V. Sadavarte for the Applicant.

Mr. Sushil Inamdar instructed by Mr. Vijay Killedar for the Respondent.

CORAM : S.J. KATHAWALLA, J.
DATED : 19th JUNE, 2017

P.C.:

1. By the above Miscellaneous Civil Application filed under Section 24 of the Code of Civil Procedure, 1908, the Applicant-wife seeks transfer of Hindu Marriage Petition No. 476 of 2013 filed by the Respondent-husband pending before the 2nd Joint Civil Judge, Senior Division and Additional Chief Judicial Magistrate, Ahmednagar under Section 9 of the Hindu Marriage Act, 1955 to the Court of 6th Joint Civil Judge, Senior Division and Additional Chief Judicial Magistrate, Pune.

2. According to the Applicant, the marriage between her and the Respondent was solemnized on 8th March, 2011. The Applicant and the Respondent last resided together at the house of the Respondent at Koradgaon, Taluka : Pathardi, District : Ahmednagar. According to the Applicant on 15th August, 2013 she was abandoned by the Respondent at Sant Tukaram Nagar, Pimpri, Pune – 411 018 and since then, she is

permanently residing at Pune. On 30th December, 2013, the Applicant filed Regular Civil Suit No.2360 of 2013 under Section 18(2), (a), (b) and (g) of the Hindu Adoption and Maintenance Act, 1956 before the Civil Judge, Senior Division, Pune for grant of permanent maintenance. In November 2013, the Respondent filed Marriage Petition No. 476 of 2013 before the Court of 2nd Joint Civil Judge, Senior Division and Additional Chief Judicial Magistrate, Ahmednagar under Section 9 of the Hindu Marriage Act, 1956 which the Applicant seeks to transfer from the Court at Ahmednagar to the Court at Pune. The Applicant has submitted that she is a medical practitioner and working in an hospital at Pune on contract basis. She is physically challenged in so far as her elbow is concerned. According to the Applicant, her father-in-law has stated in writing that he will kill her and is not scared to go to jail. She has therefore, submitted that apart from the inconvenience and hardship that will be caused to her to travel all the way from Pune to Ahmednagar on every adjourned date, in view of the threats administered to her by her father-in-law, she is scared to attend the Court of Civil Judge, Senior Division, Ahmednagar. Infact, since she failed to attend the proceedings before the Court at Ahmednagar, a "*no written statement*" order is passed against her by the Court at Ahmednagar. She has therefore, submitted that the above Application be allowed and the proceedings filed by the Respondent-husband be transferred to the Court of 6th Joint Civil Judge, Senior Division and Addl. Chief Judicial Magistrate, Pune so that the same can be heard alongwith Regular Civil Suit No.2360 of 2013 filed by the Applicant-wife under the Hindu Adoption and

Maintenance Act, 1956, before the same Court.

3. The Respondent has filed his Affidavit-in-Reply and has also filed an additional Affidavit stating that the statements and submissions of the Applicant in the above Application are false and incorrect to her knowledge; she has suppressed material documents from the Court; She has filed a Petition under the Hindu Adoption and Maintenance Act, 1956 at Pune, few days after the Respondent filed his Petition seeking restitution of conjugal rights before the Court at Ahmednagar; that the Applicant is temporarily residing at Pune; the allegation that she has received threats from her father-in-law are false and based on fabricated documents; that the distance from Pune to Ahmednagar is 120 kms. (one way) and it will hardly take three hours for the Applicant to travel the said distance; there is no need for an overnight stay at Ahmednagar; as against this, admittedly, the Respondent is having an hospital which is providing intensive care to indoor patients and therefore, it will be very difficult for him to leave the hospital and attend to the Court proceedings at Pune, moreso when the proceedings before the Court at Pune is at the stage of final arguments.

4. I have considered the submissions advanced on behalf of the parties. I have also spoken to both the parties at length and have made attempts to assist them in arriving at an amicable settlement. The Applicant is residing at Pune since 2013. It therefore cannot be said that she is 'temporarily residing at Pune'. She has taken up a job in a hospital and has signed a contract with the hospital and is entitled to very limited leave in exceptional circumstances. She is physically challenged in so far as her

elbow is concerned. As against this, admittedly the Respondent is running his private hospital/nursing home. In response to the query raised by the Court, as to who is looking after the Hospital/Nursing Home, when the Respondent is out of station or is not available for personal reasons, he has informed the Court that there are other Doctors to take care of the patients in his absence. The 'no written statement' order is passed against the Applicant and the matter is placed for final arguments only because it was inconvenient for the Applicant to attend to the Court at Ahmednagar on the adjourned dates. The Respondent will in any event be travelling to Pune to attend to the proceedings filed by the Applicant under the Hindu Adoption and Maintenance Act, 1956. In the circumstances, I am of the view that it would be in the interest of justice to transfer the Marriage Petition No.476 of 2013 pending before the Court of 2nd Joint Civil Judge, Senior Division and Additional Chief Judicial Magistrate, Ahmednagar to the Court of 6th Joint Civil Judge, Senior Division and Additional Chief Judicial Magistrate, Pune and to request the Court at Pune to allow the Applicant to file her written statement and dispose off the Marriage Petition No.476 of 2013 filed by the Respondent-husband as well as the Regular Civil Suit No. No.2360 of 2013 filed by the Applicant seeking maintenance under the Hindu Adoption and Maintenance Act, 1956 within a period of nine months from the date of this order with liberty to the Respondent to appear before the Court at Pune, through video-conferencing. Hence, the following order is passed :

- (a) The Marriage Petition being No.476 of 2013 filed by the Respondent-

husband is directed to be transferred from the Court of 2nd Joint Civil Judge, Senior Division and Additional Chief Judicial Magistrate, Ahmednagar to the Court of 6th Joint Civil Judge, Senior Division and Additional Chief Judicial Magistrate, Pune.

(b) The Registrar, Court of 2nd Joint Civil Judge, Senior Division and Additional Chief Judicial Magistrate, Ahmednagar shall ensure that the papers and proceedings of Marriage Petition No. 476 of 2013 reaches the Court of 6th Joint Civil Judge, Senior Division and Additional Chief Judicial Magistrate, Pune on or before 30th October, 2017.

(c) The Court of 6th Joint Civil Judge, Senior Division and Additional Chief Judicial Magistrate, Pune shall allow the parties to file their pleadings and hear the Marriage Petition No. 476 of 2013 alongwith Regular Civil Suit No.2360 of 2013 and shall endeavour to dispose off the same within a period of nine months from the date of this Order.

(d) The parties shall not seek adjournment/s unless absolutely necessary. The Court of 6th Joint Civil Judge, Senior Division and Additional Chief Judicial Magistrate, Pune shall also not grant adjournment/s to either side unless absolutely necessary.

(e) The 6th Joint Civil Judge, Senior Division and Additional Chief Judicial Magistrate, Pune shall allow the Respondent to pursue Marriage Petition No. 476 of 2013 and defend Regular Civil Suit No. No.2360 of 2013 through video-conferencing.

(f) The Court of 2nd Joint Civil Judge, Senior Division and Additional Chief

Judicial Magistrate, Ahmednagar shall allow the Respondent and/or his Advocate to use the video-conferencing facilities available with the Court for the purpose of defending the Marriage Petition No. 476 of 2013 alongwith Regular Civil Suit No. No.2360 of 2013.

(g) The Respondent is allowed to affirm, verify his pleadings/affidavits before the 2nd Joint Civil Judge, Senior Division and Additional Chief Judicial Magistrate, Ahmednagar and forward the same to the Court of 6th Joint Civil Judge, Senior Division and Additional Chief Judicial Magistrate, Pune which the Court of 6th Joint Civil Judge, Senior Division and Additional Chief Judicial Magistrate, Pune shall accept.

(h) Since the Respondent is granted liberty to appear through video-conferencing, the Court of 6th Joint Civil Judge, Senior Division and Additional Chief Judicial Magistrate, Pune shall fix the hearing of the matter at the time specified in advance.

(i) The Respondent shall appear before the Court of 6th Joint Civil Judge, Senior Division and Additional Chief Judicial Magistrate, Pune only when the Court requires his personal presence in Court.

(j) This order shall not preclude the Respondent from appearing before the 6th Joint Civil Judge, Senior Division and Additional Chief Judicial Magistrate, Pune in person and/or through his Advocate, if he so wishes/decides.

(k) The parties as well as the 2nd Joint Civil Judge, Senior Division and

Additional Chief Judicial Magistrate, Ahmednagar and Court of 6th Joint Civil Judge, Senior Division and Additional Chief Judicial Magistrate, Pune to act on an authenticated copy of this Order ;

(l) All contentions of the parties are kept open.

5. As stated earlier, since both the Applicant and the Respondent are educated and Doctors by profession, this Court attempted to Counsel them and tried to assist them in resolving their differences and start living together. Even after the above Order was dictated, the same was not signed and uploaded for a considerable period, since the Court was of the view that the parties may rethink and approach this Court for an order by consent. Unfortunately the parties have failed to resolve their differences despite efforts by this Court. Therefore, the order is now signed and directed to be uploaded.

6. The above Miscellaneous Civil Application No.89 of 2015 is accordingly disposed off.

(S.J.KATHAWALLA, J.)