

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO. 44 OF 2016

Smt. Rageshri Prasad Devrukhkar

... Applicant

Versus

Shri Prasad Madhusudan Devrukhkar

... Respondent

Mr. Rahul Motkari for the Applicant.
Mr. R.N. Shukhija for the Respondent.

CORAM : S.J. KATHAWALLA, J.
DATED : 30TH JUNE, 2017

P.C.:

1. By the above Misc. Civil Application filed under Section 24 of the Code of Civil Procedure, 1908, the Applicant-wife seeks transfer of Marriage Petition No. 662 of 2015 filed by the Respondent-husband and pending before the Civil Judge, Senior Division, Pune to the Civil Judge, Senior Division, Nashik.
2. The above Misc. Civil Application was filed in March-2016. By an order dated 27th October, 2016, this Court (Coram : R.D. Dhanuka, J.) directed that the above Misc. Civil Application be placed for hearing and final disposal on 6th December, 2016. However, by an order dated 8th March, 2017 Mr. Justice S.C. Gupte appointed Advocate Ms. Seema Sarnaik as Mediator to assist the parties in resolving their disputes. However, the mediation proceedings have failed and therefore the above Misc. Civil Application is taken up for hearing and final disposal.
3. According to the Applicant, the marriage between her and the Respondent

was solemnized on 26th December, 2013 at Ganapati Pule, Malgund, Nirmal Nagari, Ratnagiri. After the marriage, the Applicant started residing with the Respondent at the matrimonial home. Due to the disputes between the parties, the Applicant started residing at her parental home since June-2015. However, when she went to her matrimonial home to collect her essential belongings, she was allowed to take her belongings on the condition that she should sign papers stating that she was ready to divorce the Respondent. Though the Applicant was not willing to divorce the Respondent, she had no other alternative but to sign the papers.

4. According to the Applicant, when her maternal cousins and uncle (Dhumal family) came to know about her plight, they contacted their Advocate without seeking her permission. The said Advocate drafted a Petition for divorce by mutual consent and forwarded the same to the Advocate for the Respondent. She therefore refused to proceed for divorce by mutual consent.

5. According to the Applicant on 14th December, 2015 the Applicant received the Summons in the Petition filed by the Respondent being Petition No. 662 of 2015 seeking dissolution of marriage between him and the Applicant before the Court of Civil Judge, Senior Division, Pune.

6. According to the Applicant, her parents are old and suffering from age related illness. She does not have an independent source of income or an independent shelter. She filed an Application seeking maintenance in the proceedings filed by the Respondent seeking divorce and by an order dated 16th February, 2016 the Respondent

is directed to pay her maintenance of Rs. 6,000/- per month. To reach Pune, she is required to travel 8 kms from her parental home at Nashik to the local bus stand. She is thereafter required to take a bus from Nashik to Pune, which is at a distance of 210 kms. The Applicant is unable to commute by train since the only available train from Nashik reaches Pune at 12.00 p.m. and takes more than six hours to reach Pune. She does not have residence in Pune or a near relative in Pune where she can reside nor can she afford to pay for boarding or lodging charges. She has submitted that as against this, the Respondent is a rich man, who has no physical or monetary impediment or any other constraint of any type in attending to the proceedings if his Petition is transferred to Nashik. It is submitted that the distance from his residence i.e. Mulshi, Pune to Nashik is only 180 kms. The Respondent is required to travel a distance of 30 kms from Mulshi to the Court at Pune. If the said marriage Petition is transferred to Nashik then the Respondent will have to travel only 150 kms more. If the said case is not transferred, the Applicant will have to travel a distance of 215 kms and return via the same route on the same day. It is therefore submitted by the Applicant that if the relief as sought in the above Misc. Civil Application is not granted, grave inconvenience and hardship will be caused to her.

7. The Respondent has filed his detailed Affidavit in Reply, wherein he has denied and disputed all the allegations made by the Applicant. He has submitted that the Applicant was working with Dhumal Harmonium makers as a Co-Singer, Harmonium Player and playing Synthesizer. She was earning Rs. 40,000/- to Rs.

50,000/- per month. She has conducted various musical entertainment programmes at various places in India. The Respondent has annexed photographs of the Applicant to show her participation in some of the musical shows. The Respondent has submitted that one of the sister of the Applicant is a divorcee and she too is a Singer. He has submitted that her other sister who is unmarried, is an Advocate. Her two brothers are helping her in the musical entertainment programmes. The Respondent has submitted that on 14th June, 2016, an order of no written statement is passed by the Court at Pune. He has submitted that on 7th July, 2016 an Affidavit of Evidence is filed by him, the matter is part-heard and will be decided in some time. He has submitted that both the parties had agreed to apply for divorce by mutual consent, however the Applicant subsequently backed out.

8. The Applicant has filed her Affidavit in Rejoinder refuting the allegations made by the Respondent in his Affidavit in Reply. She has reiterated that she does not have an independent source of income nor an independent shelter. She has stated that she plays harmonium and participates in 4 to 6 musical shows in a year and gets an honorarium of Rs. 800/- to Rs. 1,000/- per show. On many occasions, she plays harmonium as a Seva (free of cost). She submitted that some of the shows are local and very rarely, she travels for shows outside Nashik during which she is accompanied by fellow lady singers and other ladies involved in those activities. She has admitted that one of her sisters is a Singer (but not a professional Singer) and another sister is an Advocate. She has submitted that the same is of no consequence qua the present

litigation.

9. The Applicant has submitted that she has tendered a copy of the order dated 16th February, 2016 passed by the Civil Judge, Senior Division, Pune granting her maintenance of Rs. 6,000/- per month, wherein the learned Judge has observed that the contention of the Respondent husband has no force and it appears that the same are in formal nature and only to oppose the claim of the Applicant. The learned Judge has also recorded that the Respondent husband has not produced any documents to show that the Applicant wife is having any source of income or is able to maintain herself. The learned Judge further recorded that it appears that the Respondent only denied the fact of his financial sound position to avoid and minimize his liability of maintenance.

10. The Applicant has in her Affidavit in Rejoinder further pointed out that since it is difficult for her to attend the proceedings at Pune and she could not attend the same an order of no written statement was passed against her. She therefore took out an Application for setting aside the said order, which Application is pending. In the meantime, the Respondent is trying to rush the matter and has hurriedly filed his Affidavit of Evidence. The Applicant has admitted that the members of her family are engaged in the activities of music either as local musicians or accompanying artists. She has therefore once again submitted that the above Misc. Civil Application filed by her be allowed.

11. I have considered the submissions advanced on behalf of the parties. The

parents of the Applicant were very old when the above Misc. Civil Application was filed. In fact, at the time of hearing of the Application, I was informed that the father of the Applicant has passed away in April-2017. I have gone through the photographs produced by the Respondent. The Applicant is correct in disputing that she is not a Singer. From the said photographs, it is clear that she only plays the harmonium. The Applicant has pointed out that she plays the harmonium for 4 to 6 musical shows in a year for which she gets Rs.800/- to Rs. 1000/- per show. She has also pointed out that in some of the shows she plays harmonium absolutely free of cost.

12. The Respondent has failed to establish that the Applicant earns Rs. 40,000/- to Rs. 50,000/- per month as alleged by him. In fact, as pointed out by the Applicant, the learned Judge in his order dated 16th February, 2016 whilst granting maintenance of Rs.6,000/- per month to the Applicant, has observed that the contention of the Respondent husband has no force and it appears that the same are in formal nature and only to oppose the claim of the Applicant. The learned Judge has also recorded that the Respondent husband has not produced any documents to show that the Applicant wife is having any source of income or is able to maintain herself. The learned Judge further recorded that it appears that the Respondent only denied the fact of his financial sound position to avoid and minimize his liability of maintenance.

13. I see substance in the submission of the Applicant that she is unable to travel alone to Pune on each date of hearing without an escort, which journey takes

approximately 10 to 12 hours. On the other hand, whenever she has travelled for any musical shows outside Nashik to play harmonium, she is always accompanied by other lady singers / organizers / musicians. She has correctly pointed out that as against the inconvenience and hardship that is being caused to her, the Respondent is required to travel only 150 kms to come to Nashik if the divorce petition is transferred to the Court at Nashik. Though the Respondent has filed a detailed Affidavit in Reply running into several pages and has made several allegations against the Applicant except for making a general statement in his Affidavit that grave inconvenience and hardship will be caused to him if Marriage Petition No. 662 of 2015 filed by him is transferred to the Civil Judge, Senior Division, Nashik, the Respondent has not given any particulars qua the inconvenience and hardship that would allegedly be caused to him. In the circumstances, I pass the following order :

- i. The learned Civil Judge, Senior Division, Pune is directed to transmit the papers and proceedings of the Marriage Petition No. 662 of 2015 to the Civil Judge, Senior Division, Nashik.
- ii. The parties as well as the learned Civil Judge, Senior Division, Pune and the Civil Judge, Senior Division, Nashik to act on an authenticated copy of this order.
- iii. Parties and / or their Advocates shall appear before the Civil Judge, Senior Division, Nashik on 18th August, 2017 at 11.00 a.m. and obtain appropriate orders / directions.
- iv. The above Misc. Civil Application is disposed off in the aforesaid terms,

with no order as to costs.

(S.J.KATHAWALLA, J.)