

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
MISCELLANEOUS CIVIL APPLICATION NO. 63 OF 2017

Mrs.Vaishali Atul Tapase
Nee Vaishali Shashikant Hire

... Applicant

Versus

Mr.Atul Bhagwan Tapase

... Respondent

Mr. Raviraj Gamare i/b. Manoj Gaikwad for the Applicant.
None for the Respondent.
Applicant is present in Court.

CORAM : S.J. KATHAWALLA, J.
DATED : 21st AUGUST, 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.193 of 2016 filed by the Respondent-husband seeking restitution of conjugal rights pending before the Court of Civil Judge, Senior Division at Kopargaon, District : Ahmednagar to the Court of Civil Judge, Senior Division at Panvel, District : Raigad.
2. According to the Applicant, marriage between her and the Respondent was solemnized on 24.05.2009 at Vashi. On 16.03.2011 a son named Hiten was born to the Applicant and Respondent. Since disputes arose between the parties the Applicant alongwith her son started residing with her parents since 2016 at Kamothe, Panvel.
3. The Respondent thereafter filed Hindu Marriage Petition No.193 of 2016

before the Court of Civil Judge, Senior Division at Kopargaon, District : Ahmednagar for restitution of conjugal rights.

4. It is submitted by the Applicant that though the Respondent is working and residing at Vashi (New Bombay), he has filed Marriage Petition No. 193 of 2016 before the Court of Civil Judge, Senior Division at Kopargaon, District : Ahmednagar.

5. The Applicant has further submitted that she is residing with her parents alongwith her minor son at Panvel. To attend the proceedings filed by the Respondent before the Court of Civil Judge, Senior Division at Kopargaon, District : Ahmednagar, she is required to take an autorickshaw from her parental home (Kamothe) to Panvel S.T. Stand and thereafter she has to take S.T. or private bus for Shirdi. From Shirdi she is required to go to Kopargaon S.T. Stand and again take an autorickshaw to the Court of Civil Judge, Senior Division at Kopargaon, District : Ahmednagar. Therefore, to attend the proceedings in Hindu Marriage Petition No. 193 of 2016 filed by the Respondent, she will have to travel for 10 hours (one way). The Applicant has therefore submitted that since her parents are very old and she is required to look after her minor son (who is in Junior K.G.) including dropping him to school and bringing him back, it will cause grave inconvenience and hardship to her if she is required to travel from Panvel to Kopargaon. She has submitted that even otherwise, the Respondent is not paying a single rupee towards her maintenance and the maintenance of the minor child. She is completely at the mercy of her father and brother for the survival of herself and her child. She has submitted that as against this the

Respondent who is residing and working at Vashi is required to travel a distance of only 60 minutes to attend the proceedings, if transferred to the Court at Panvel.

6. Despite the service of the Miscellaneous Civil Application and the orders passed by this Court, the Respondent has failed to appear before this Court. In view thereof, what is stated by the Applicant in her application has remained uncontroverted.

7. As pointed out by the Applicant, the Respondent is working and residing at Vashi. However, it appears that he has filed Hindu Marriage Petition No.193 of 2016 before the Court of Civil Judge, Senior Division at Kopergaon, District : Ahmednagar only to cause harassment to the Applicant who is required to look after their minor son who is studying in Junior K.G. The Applicant and the minor child is not receiving a single rupee from the Respondent towards maintenance. It is therefore even otherwise difficult for the Applicant to attend the proceedings filed by the Respondent before the Court at Kopergaon, District : Ahmednagar and incur travel expenses as well as the boarding and lodging expenses. I am therefore in agreement with the Applicant that grave inconvenience and hardship will be caused to her if the relief sought in the Application is not granted, whereas no inconvenience will be caused to the Respondent if he is required to attend the proceedings at Panvel upon transfer of Marriage Petition No.193 of 2016. In the circumstances, I pass the following Order.

(a) The Marriage Petition being No.193 of 2016 filed by the Respondent-husband is directed to be transferred from the Court of Civil Judge, Senior Division at

Kopargaon, District : Ahmednagar to the Court of Civil Judge, Senior Division, Panvel, District : Raigad.

(b) The Court of Civil Judge, Senior Division at Kopargaon, District : Ahmednagar is directed to transmit the papers and proceedings of Marriage Petition No.193 of 2016 to the Court of Civil Judge, Senior Division, Panvel, District : Raigad on or before 7th September, 2017.

(c) The parties and/or their Advocates shall appear before the Court of Civil Judge, Senior Division, Panvel, District : Raigad on 11th September, 2017 at 11.00 a.m. and obtain appropriate orders.

(d) The parties as well as the Court of Civil Judge, Senior Division at Kopargaon, District : Ahmednagar and the Court of Civil Judge, Senior Division, Panvel, District : Raigad to act on an authenticated copy of this Order.

8. Miscellaneous Civil Application is allowed in the aforesaid terms, with no order as to costs.

(S.J.KATHAWALLA, J.)