

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

MISC. CIVIL APPLICATION NO.97 OF 2017

1. Sou. Dipali Ananda Gondhali .Applicants
2. Aditi Ananda Gondhali

Vs.

Ananda Shivaji Gondhali .Respondent

Mr. N. R. Awate, Advocate, for the Applicants

Mr. U. Desai i/b. Mr. P. Bhavake, Advocate, for the Respondent

CORAM : REVATI MOHITE DERE, J.

DATE : 03.10.2017

P.C.

. At the outset, learned counsel for the Applicants seeks leave to amend. Leave granted. Amendment to be carried out forthwith.

2. Heard learned counsel for the parties.

3. By this Application, the Applicants seek transfer of H. M. P. No. 334 of 2016 from the Court of the learned Civil Judge Senior Division, Kolhapur to the Court of the learned Civil Judge Senior Division, Osmanabad, having jurisdiction to try and entertain the said Application.

4. Learned counsel for the Applicants submits that the Applicants – wife and daughter respectively are staying with the Applicant No.1's father at Tuljapur, District – Osmanabad for the last three years. He submits that the Applicant No.1 has filed a private case, being R.C.C.No.38 of 2016 in the Court of the learned Judicial Magistrate First Class, Tuljapur alleging the offences punishable under Sections 498A, 323, 504 & 506 of the Indian Penal Code, as against the Respondent. He further submits that the Applicants have also filed an Application seeking maintenance under Section 125 of the Code of Criminal Procedure, in the Court of the learned Judicial Magistrate First Class, Tuljapur. He submits that the Respondent has filed a Petition, being H.M.P.No.334 of 2016 under Section 13-A of the Hindu Marriage Act, in the Court of the learned Civil Judge Senior Division, Kolhapur. He submits that the Applicants have not received any maintenance till date from the Respondent and are required to travel almost 400 Km to Kolhapur for hearing in the HMP. He submits that the Applicant No.2 is aged four years and that it is impossible for the Applicants to travel to Kolhapur, with her small daughter or even alone without a companion. He further submits that even financially she is dependent on her parents and that it will cause grave inconvenience & hardships to the Applicants, if they are required to travel to Kolhapur.

5. Learned counsel for the Respondent opposes the Application.

6. Perused the papers. The Applicant No.1 got married to the Respondent on 11.05.2012 at Murgud, Taluka – Kagal, District – Kolhapur as per Hindu rites. From the said marriage, the Applicant No.1 and the Respondent have one daughter, who is about four years today. After marriage, the Applicant No.1 went to reside at her matrimonial home at Murgud in Respondent's joint family. It appears that after some time, there were quarrels between the Applicant No.1 and the Respondent. In 2013, she went for delivery to her parents house. It appears that in April, 2014, the Applicant No.1 went to co-habit with the Respondent. In February, 2015, according to the Applicant No.1, the Applicant No.1 was thrown out of the Respondent's house and hence, since February, 2015, the Applicants are residing with the Applicant No.1's father at Tuljapur. In 2016, the Applicant No.1 filed a private complaint, being R.C.C.No.38 of 2016 as against the Respondent, alleging offences punishable under Sections 498A, 323, 504 & 506 of the Indian Penal Code, in the Court of the learned Judicial Magistrate First Class, Tuljapur. The Applicant No.1 also filed an Application seeking maintenance under Section 125 of the Code of Criminal

Procedure in the Court of the learned Judicial Magistrate First Class, Tuljapur. According to the learned counsel for the Applicants, the Applicant No.1's father was a pujari and as such, he has no other source of income. Learned counsel for the Applicants also submitted that the Applicant No.1 was the elder daughter and that the Applicant No.1 has three unmarried sisters and one younger brother, who are also dependent on their father. It appears that H.M.P., being H.M.P.No.334 of 2016 was filed by the Respondent after the aforesaid two proceedings were filed by the Applicants. The Respondent has filed the aforesaid H.M.P. in the Court of the learned Civil Judge Senior Division, Kolhapur and has sought divorce under Section 13-A of the Hindu Marriage Act.

7. Considering not only the financial difficulty of the Applicants but also other constraints i. e. of travelling 700 - 800 Km (to and fro) from Osmanabad to Kolhapur and back again, Applicant No.2 being aged four years, etc., I am satisfied that grave inconvenience and hardship will be caused to the Applicants, if the relief sought for is not granted. On the other hand, no prejudice would be caused to the Respondent, if the case is transferred from the file of the learned Civil Judge Senior Division, Kolhapur to the Court of the learned Civil Judge Senior Division, Osmanabad, as already there are two proceedings

pending in the Tuljapur Court.

8. Considering the aforesaid, the Application is allowed and the proceedings i. e. H.M.P.No.334 of 2016 filed by the Respondent before the learned Civil Judge Senior Division, Kolhapur, stands transferred to the learned Civil Judge Senior Division, Osmanabad, having jurisdiction to try and entertain the Application. Accordingly, the Application is disposed of.

All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)