

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
MISC. CIVIL APPLICATION NO. 59 OF 2017

Mrs. Arti Vishal Jadhav ... Applicant

Versus

Mr. Vishal Vilas Jadhav ... Respondent

Mr. Prosper D'souza for the Applicant.

Mr. Anup Lahoti for the Respondent.

CORAM : S.J. KATHAWALLA, J.

DATED : 22ND 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 Divorce Petition No. PA 633 of 2014 filed by the Respondent-husband and pending before the Family Court No. 5 at Pune to the Family Court at Thane.

2. The marriage between the Applicant and the Respondent was solemnized on 27th May, 2013 at Pune. Disputes arose between the parties and the Applicant returned to her parental home. In fact, the Applicant is at present residing with her mother, father and brother in a flat, which they have taken on Leave and License basis at Thane.

3. On 13th December, 2013 the Respondent filed the matrimonial Petition No. PA 633 of 2014 seeking divorce before the Family Court at Pune.

4. The Applicant filed the proceedings under the Protection of Women from Domestic Violence Act, 2005 being Case No. 04 of 2014 before the JMFC, Thane. In the said DV Case, the Court has directed the Respondent to pay maintenance at the rate of Rs.3,000/- per month to the Applicant, which order has been breached by the Respondent.

5. The Applicant has filed a Case being RCC No. 402998 of 2014 under Section 498A of the Indian Penal Code, 1860 and has moved a Criminal Application for transferring the said case from Pune to Thane.

6. The Applicant has also filed an Application seeking maintenance before the Family Court at Pune in the Divorce Petition No. PA 633 of 2014 filed by the Respondent against the Applicant. Since the Applicant was already granted maintenance of Rs.3,000/- per month by an order dated 2nd February, 2014 passed by the JMFC, Pune, the Family Court, Pune declined to grant any ad-interim maintenance to the Applicant. However, the Court directed the Respondent to pay Rs.1050/- towards her travel expenses, which too the Respondent has not paid.

7. It is submitted on behalf of the Applicant that the distance between Thane to Pune is more than 150 kms (one way) by road and it takes more than three hours to reach the Pune Court from Thane. She has submitted that travelling from Thane to Pune is causing grave inconvenience to her. Since several threats have been received by her from the Respondent and the Respondent having slapped her mother in the JMFC Court at Murbad, Thane, for which a non cognizable complaint has been

registered with the Police Authorities she needs an escort to attend the Court at Pune.

8. The Applicant has submitted documents from which it is established that the Respondent has done his Bachelor of Engineering in Computers from the University at Pune. From his profile posted by him on the internet, admittedly he was working / has worked as Software Developer. The Applicant has submitted that despite the Respondent being highly qualified, he has breached the order directing him to pay maintenance of Rs. 3,000/- per month and has also breached the order directing him to pay Rs.1,050/- to the Applicant as and when she comes to Pune to attend to the divorce proceedings filed by the Respondent before the Family Court at Pune.

9. According to the Applicant, in the month of February-2016, she had filed an Application before the Family Court at Pune in Divorce Petition No. PA 633 of 2014 filed by the Respondent and informed the Court that due to M.Sc. Part II examination she would not be able to attend the Court for three months. However, the learned Judge passed "No cross order" on 5th May, 2016 against the Applicant. It is only after she filed the Application before the learned Family Court for setting aside the order of "No cross" that the said order was set aside subject to payment of costs of Rs.250/-. The Applicant has also submitted that the Respondent is not attending the Divorce proceedings but it is his mother who attends the proceedings and gets it recorded in the Roznama that the Respondent has remained present in Court.

10. The Respondent has filed his Affidavit in Reply disputing the allegations of the Applicant. However, he has not disputed the fact of him breaching the order

granting maintenance of Rs.3,000/- per month to the Applicant as well as the payment of Rs.1,050/- directed to be paid to the Applicant on each date of hearing. As recorded in the order passed by the Family Court No. 5, Pune dated 28th October, 2015, the Respondent has admitted that he has done Computer Engineering but he has informed the Court that he is in the profession of making Tattoos and is only earning Rs.7,000/- per month and he is not getting any salary. He has not denied the fact that he is not paying Rs. 3,000/- as ordered by the Court towards maintenance to the Applicant on a regular basis but has stated that he pays from time to time. He has not denied or disputed that though the Family Court at Pune has directed him to pay an amount of Rs.1,050/- per trip for two persons towards travelling expenses, he has failed to pay the same. He has submitted that on 5th May, 2016 the Family Court, Pune has passed “No Cross Order” against the Applicant and since the Applicant failed to file her evidence and the Affidavit in Chief, the Family Court forfeited her right to lead evidence and placed the matter for final arguments. However, the order of “No Cross” is set aside by the Family Court by its order dated 31st March, 2017 subject to the Applicant paying costs of Rs. 250/-. The Respondent has submitted that since the Applicant has not conducted the cross of the Respondent and his witnesses, and has also not filed her evidence, the matter is at the last stage and the same need not be transferred. He has submitted that the Applicant has lodged an FIR against him and his family members under the provisions of Section 498A of the Indian Penal Code, 1860, which is pending before the JMFC Court at Pune. He has

submitted that the Applicant has filed the case before the JMFC Court at Thane under the Protection of Women from Domestic Violence Act, 2005. However, till date nothing has happened in the matter. He has therefore submitted that the Application taken out by the Applicant be dismissed.

11. I have considered the submissions advanced on behalf of the Applicant as well as the Respondent.

12. The Applicant is residing at Thane along with her mother, father and brother in a house, which is taken by them on Leave and License basis. The distance between Thane to Pune is more than 150 kms (one way) by road and there is no direct train service from Thane to Pune. It takes more than three hours to reach the Court at Pune from Thane. On some days, the Applicant is required to spend the whole day in Court and she has no friends or near relatives at Pune, where she could arrange an overnight stay. The Applicant has filed Case No. RCC 402898 of 2014 under Section 498A of the Indian Penal Code, 1860 before the Pune District Court and she is in the process of filing an Application seeking transfer of the said case from Pune to Thane. Even otherwise, the financial condition of the Applicant is very weak. The Respondent has not paid maintenance of Rs. 3,000/- per month to her as ordered, on regular basis, and has not paid any amount to her towards her travelling expenses despite the Court having passed an order directing him to do so. As against this, the Respondent who is admittedly a Computer Engineer and has earlier disclosed on internet that he is a Software Developer, having an income of Rs.30,000/- per month,

is now contending that he is in the profession of making Tattoos and is earning only Rs. 7,000/- per month as a freelancer. The Respondent will be attending Case No. 04 of 2014 filed by the Applicant under the Protection of Women from Domestic Violence Act, 2005 at Thane and therefore can also attend the divorce proceedings filed by him at Pune if the same is transferred to the Court at Thane. Since the Applicant was unable to travel from Thane to Pune, the Family Court at Pune did pass an order of “No Cross” examination, which was subsequently set aside subject to the Applicant paying costs of Rs.250/-. For the same reasons, the Family Court at Pune has also passed an order against the Applicant forfeiting her right to lead evidence and has placed the matter for final arguments. If the divorce Petition is transferred to Thane as sought by the Applicant, she will be able to cross-examine the Respondent and also file her evidence in the matter and proceed with the trial.

13. In the circumstances, I am satisfied that grave inconvenience and hardship will be caused to the Applicant if relief sought in the Application is not granted, whereas no such inconvenience will be caused to the Respondent, who is already attending / shall be attending the case bearing No. 04 of 2014 filed by the Applicant under the Protection of Women from Domestic Violence Act, 2005 before the Court at Thane and who claims to be a freelancer not having a fixed job. In the circumstances, I pass the following order :

i. The learned Principal Judge, Family Court No. 5 at Pune is directed to transmit the papers and proceedings of the Divorce Petition No. PA 633 of 2014 to the

Principal Judge, Family Court at Thane.

- ii. The parties as well as the learned Principal Judge, Family Court No. 5, Pune and the Principal Judge, Family Court at Thane to act on an authenticated copy of this order.
- iii. Parties and / or their Advocates shall appear before the Principal Judge, Family Court, Thane on 21st August, 2017 at 11.00 a.m. and obtain appropriate orders / directions.
- iv. The above Misc. Civil Application is allowed in the aforesaid terms, with no order as to costs.

(S.J.KATHAWALLA, J.)