

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

MISC. CIVIL APPLICATION NO.126 OF 2017

Ms. Sarika Babalu Indrekar	...	Applicant
versus		
Babalu Ramesh Indrekar	...	Respondent

Mr. Gajendra Jadhav with Mr. Nadar John, for Applicant.
None for Respondent.

CORAM: S.J. KATHAWALLA, J.

DATE: 30th JUNE, 2017

P.C.:

1. The above Misc. Civil Application is filed by the Applicant wife seeking transfer of Marriage Petition No.361 of 2014 filed by the Respondent husband before the Family Court, Aurangabad to the Family Court at Bandra, Mumbai. On 29-03-2017, this Court (Coram : N.M.Jamdar, J.) directed the Applicant to give notice to the Respondent and file an Affidavit of service. The matter was adjourned to 26th April, 2017. When the matter was called out on 20th June, 2017, none appeared for the Respondent. The Advocate for the Applicant filed Affidavit of Service pointing out that the Respondent has refused service at his address shown in the cause title and the packet containing the proceedings sought to be served at his office address is returned with the remark 'unclaimed'. In view thereof, on 20th June, 2017 this Court passed the following order :

"By an order dated 29.03.2017 the applicant was directed to give notice to the respondent and file an affidavit of service. Accordingly, the Advocate for the applicant filed affidavit of service pointing out that the respondent has refused service at his address and the packet containing the proceedings sought to be served at his office address is returned with the remark 'unclaimed'. The learned Advocate stated that though the matter is directed to be placed before this court on 30.06.2017, the Advocate for the applicant has moved this court stating that the Family Court at Aurangabad is proceeding with the Matrimonial Petition No.361/14 ex-parte and has declined his request for adjournment in the absence of any order from this court. In view thereof, the above application shall be taken up for hearing and final disposal on 30.06.2017, high on board. In the meantime, the Family Court at Aurangabad shall not proceed with the Petition No.361/14. Office to forthwith forward a copy of this order by Speed Post A.D. to the respondent at the address shown in the cause title. The Advocate for the petitioner shall also serve a copy of this order by Speed Post A.D. at the address of the respondent shown in the cause title."

2. Pursuant to the above order, the Advocate for the Applicant has served a copy of the same on the Respondent, which he has received on 24th June, 2017. However, the Respondent has failed to remain present. The Court has therefore, proceeded with the hearing and final disposal of the above Misc. Civil Application.

3. The Applicant and Respondent were married on 10th May, 2017. After marriage, they had a son named Tanish who is at present 9 years old. The Applicant

was driven out of her matrimonial home on 11th July, 2011. On 22-07-2013, the Applicant had filed a case under the Protection of Women from Domestic Violence Act, 2005 before the Andheri Court. Though an order dated 03-02-2014 is passed by the Andheri Court directing the Respondent to pay maintenance to the Applicant and her son amounting to Rs.3,000/- per month, the Respondent has failed to pay the same since last several months. On 17-06-2014, the Applicant also filed proceedings under Section 125 of Code of Criminal Procedure bearing No.E-257 of 2014. The Respondent is attending the proceedings filed under the Domestic Violence Act at Andheri Court at Mumbai. After the Applicant wife filed the above proceedings, the Respondent filed a Divorce Petition bearing No.361 of 2014 on 13-08-2014 at the Family Court at Aurangabad.

4. The Applicant is staying at Andheri with her old mother. According to her, since she has to look after the minor son as well as her mother, it is very difficult for her to attend the divorce proceedings filed by the Respondent at Aurangabad after the Applicant having filed the aforesaid proceedings under the Protection of Women from Domestic Violence Act, 2005 at Mumbai.

5. The Applicant has submitted that she is financially not sound and is in no position to incur the travel expenses as well as the boarding and lodging expenses. She has no relative at Aurangabad where she can arrange an overnight stay. As against this, the Respondent who is already attending the proceedings under the Domestic

Violence Act at Mumbai, can also attend the divorce proceedings at Mumbai after the said proceedings are transferred to Mumbai.

6. From the aforesaid facts, I am satisfied that the Applicant would face grave inconvenience and hardship if the above Misc. Civil Application filed by her is not allowed and she is required to attend to the divorce proceedings at Aurangabad, more so since the said divorce proceedings are filed after she filed the proceedings under the Domestic Violence Act and a Petition seeking maintenance under Section 125 of Cr.P.C., at Mumbai and also since the Respondent has failed to pay the maintenance of Rs.3,000/- awarded by the Court at Andheri for the subsistence of the Applicant and her son. The Respondent is already visiting Mumbai to defend the proceedings filed by the Applicant against the Respondent. In view thereof, the above Misc. Civil Application is allowed in terms of prayer clause (a) which is reproduced hereunder :

- i. The Marriage Petition No. 361 of 2014 filed by the Respondent Husband is directed to be transferred from the Family Court at Aurangabad to the Family Court at Bandra, Mumbai.
- ii. The Family Court at Aurangabad is directed to transmit the papers and proceedings of Marriage Petition No. 361 of 2014 to the Family Court at Bandra, Mumbai.
- iii. The parties as well as the Family Court at Aurangabad and the Family Court

at Bandra, Mumbai to act on an authenticated copy of this order.

iv. The parties and / or their Advocates shall appear before the Family Court at Bandra, Mumbai on 21st July, 2017 at 11.00 a.m. and obtain appropriate orders.

v. The above Misc. Civil Application is allowed in the aforesaid terms with no order as to costs.

(S.J.KATHAWALLA, J.)