

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
MISCELLANEOUS CIVIL APPLICATION NO. 199 OF 2017

Mrs. Bhumika Mohan Lalwani ... Applicant

Versus

Mr. Mohan Gurbux Lalwani ... Respondent

Mr. Abhijit Adagule for the Applicant.

None for the Respondent.

CORAM: S.J. KATHAWALLA, J.

DATED : 25TH JULY, 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 Marriage Petition No. 1006 of 2016 filed by the Respondent-husband seeking divorce, pending before the Court of Civil Judge Senior Division at Kalyan to the Court of Civil Judge Senior Division at Kolhapur.
2. The marriage of the Applicant and the Respondent was solemnized on 05.12.2006 at Ulhasnagar. After marriage, a daughter named Jiya and a son named Bhavesh were born to the Applicant and the Respondent.
3. According to the Applicant since she was harassed by the Respondent and his family members, in April 2014 she left her matrimonial home and started residing with her parents alongwith her children.
4. The Applicant wife has filed Suit No.180 of 2016 in the Court of Civil Judge Senior Division, Kolhapur under the provisions of Sections 20 and 21 of the Hindu

Adoption and Maintenance Act, 1956 which is pending. The Respondent is attending the said proceedings.

5. The Respondent husband has filed Marriage Petition No.1006 of 2016 before the Court of Civil Judge Senior Division at Kalyan seeking dissolution of marriage between the Applicant and the Respondent.

6. It is submitted on behalf of the Applicant that the Respondent has filed the Petition seeking divorce before the Court of Civil Judge Senior Division at Kalyan, only to cause harassment to her after she filed a suit seeking maintenance before the court at Kolhapur. She has submitted that grave inconvenience and hardship will be caused to her if she has to travel from Kolhapur to Kalyan on every adjourned date alongwith her two children. Even otherwise, since she is not well educated, unemployed and has no source of income, it is impossible for her to bear the travel expenses from Kalyan to Kolhapur (to and fro). As against this, the Respondent is already attending the court proceedings filed by her before the Court of Civil Judge, Senior Division at Kolhapur. She has, therefore, submitted that the above Application be allowed.

7. Mr.Jayesh M. Bhagia has filed his appearance for the Respondent. Since neither the Respondent nor his Advocate appeared before this Court on 17.07.2017, this Court passed the following order :-

“1. Place the above Misc. Civil Application for hearing and final disposal on 24th July, 2017.

2. The Advocate for the Applicant shall forthwith serve a copy of this order on the Advocate Jayesh Manohar Bhagia, who has filed his appearance on behalf of the Respondent and who is not present before the Court despite the matter being called out in the morning session as well as again in the afternoon session.”

8. The Learned Advocate appearing for the Applicant states that the said Order is conveyed to the Advocate for the Respondent by e-mail, but has today again failed to appear before this Court. However, he has informed the Court that Advocate Jayesh Bhagia has informed him that since the Respondent is going to withdraw the proceedings before the Court at Kalyan, he is not appearing before this Court. The Advocate for the Respondent after filing his vakalatnama for the Respondent in the above matter is bound to appear before this Court, even if he has instructions from his client that he is not going to proceed with the divorce petition before the Court at Kalyan. In view thereof, the conduct of Advocate Mr. Jayesh Bhagia is strongly deprecated. In any event, since the Respondent has not filed his Affidavit-in-Reply, the facts stated by the Applicant in the above Civil Application have remained uncontroverted. There is no reason as to why this Court should not accept the same. This Court is therefore satisfied that grave inconvenience and hardship will be caused to the Applicant if she is required to travel along with her two children all the way from Kolhapur to Kalyan to attend to the divorce proceedings filed by the Respondent against her before the Court of Civil Judge Senior Division, Kalyan. Again, she has not received a single rupee towards her maintenance and towards the maintenance for

her two children and therefore, it is not possible for her to bear the travel as well as the boarding and lodging expenses of her and her children on every adjourned date. In the circumstances, I pass the following order.

(a) The Marriage Petition No. 1006 of 2016 filed by the Respondent-husband is directed to be transferred from the Court of Civil Judge Senior Division at Kalyan to the Court of Civil Judge Senior Division at Kolhapur.

(b) The Court of Civil Judge Senior Division at Kalyan is directed to forthwith transmit the papers and proceedings of Marriage Petition No. 1006 of 2016 to the Court of Civil Judge Senior Division at Kolhapur.

(d) The parties as well as the Court of Civil Judge Senior Division at Kalyan and the Court of Civil Judge Senior Division at Kolhapur to act on an authenticated copy of this Order ;

(e) The parties and/or their Advocates shall appear before the Family Court at Kolhapur on 10th August, 2017 at 11.00 a.m. and obtain appropriate orders/directions.

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

(S.J.KATHAWALLA,J.)