

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
MISC. CIVIL APPLICATION NO. 198 OF 2016

Smt. Suvarna Deepak Yeole ... Applicant

Versus

Shri Deepak Madhukar Yeole ... Respondent

Mr. Sachin Gite for the Applicant.
Mr. Kalpesh Patil for the Respondent.

CORAM : S.J. KATHAWALLA, J.
DATED : 1st JULY, 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 Marriage Petition No. A-394 of 2015 filed by the Respondent-husband and pending before the Family Court, Nashik to the Civil Judge, Senior Division, Dhule.
2. The marriage between the Applicant and the Respondent was solemnized on 11th July, 2013. A son named 'Swanand' was born to them on 7th January, 2015.
3. In view of the disputes between the parties, they have not cohabited together after the birth of their son. The Respondent filed Marriage Petition No. A-394 of 2015 before the Family Court at Nashik under Section 9 of the Hindu Marriage Act, 1955 seeking restitution of conjugal rights. According to the Applicant, she appeared before the Family Court at Nashik and expressed her willingness to cohabit with the Respondent, "however, the Respondent did not take any positive action for

restitution of conjugal rights”. Since the Applicant is not having any source of income, she has filed proceedings under Section 125 of the Code of Criminal Procedure, 1973 before the JMFC at Dhule. The Applicant has also filed proceedings against the Respondent under the Protection of Women from Domestic Violence Act, 2005 at Dhule.

4. According to the Applicant, she is residing with her parents at Village Chinchkhed, Taluka, District Dhule. To attend to the marriage proceedings filed by the Respondent, she has to first travel from Chinchkhed to Village Mukti on Jalgaon Road and from Village Mukti she has to reach Dhule by taking another bus. From Dhule, the Applicant has to again take a bus to go to Nashik, which is 160 kms from Dhule.

5. The Applicant submits that therefore grave inconvenience and hardship will be caused to her if she is required to go to Nashik from Chinchkhed to attend the proceedings filed by the Respondent along with her child who is two years old. It is submitted that in any event, the Respondent will be defending the proceedings filed by the Applicant at Dhule. It is submitted that the Respondent is earning more than Rs.60,000/- per month, whereas the Applicant being jobless has no income. In the proceedings filed by her under the Protection of Women from Domestic Violence Act, 2005, the Respondent is ordered to pay her only Rs.600/- towards maintenance. It is therefore submitted that the above Misc. Civil Application be allowed.

6. The above Misc. Civil Application is pending before this Court since the

year 2016. The Respondent is represented by an Advocate also since the year 2016. On 15th March, 2017, the Advocate for the Respondent took time on the ground that he would assess the possibility of a mutual settlement. The Misc. Civil Application was therefore adjourned to 5th April, 2017. Since the Misc. Civil Application had not reached, the Advocate for the Applicant mentioned the matter before this Court on 16th June, 2017, when the above Misc. Civil Application was directed to be placed on 29th June, 2017 to be heard finally at the stage of Admission. On 29th June, 2017 the matter was adjourned to 30th June, 2017. On 30th June, 2017 this Court enquired as to whether the Respondent is present since the Applicant has stated in her Application that though she had appeared before the Family Court at Nashik and had informed the Court that she is willing to cohabit with the Respondent, who has filed the Petition seeking restitution of conjugal rights, he has not shown any interest and further since the Advocate for the Respondent himself had in March-2017 obtained an adjournment on the ground that he is trying to assess the possibility of a mutual settlement. However, the Respondent was not present. The learned Advocate appearing for the Respondent on instructions gave an undertaking that the Respondent shall remain present before the Court on 1st July, 2017 at 10.30 a.m. in Chambers. The Respondent has breached the undertaking and has not turned up. This Court has therefore proceeded to hear the above Misc. Civil Application.

7. As set out hereinabove, the Respondent has filed the Petition before the Family Court at Nashik seeking restitution of conjugal rights. As stated by the

Applicant, she attended the Family Court at Nashik and informed the Court that she is willing to cohabit with the Respondent. However, the Respondent did not show any interest in cohabiting with the Applicant. The Respondent has since the year 2016 not filed Affidavit in Reply to the above Application though he is throughout represented by an Advocate. He has also not attended the Court despite giving an undertaking to do so. It therefore appears that the Respondent has filed the Petition seeking restitution of conjugal rights before the Family Court at Nashik only to cause harassment and inconvenience to the Applicant, i.e. to make her undertake a journey from Village Chinchkhed with the two year old child all the way to Nashik and back. Even otherwise, it would cause grave inconvenience and hardship to the Applicant to reach Nashik from Dhule by changing buses at different destinations as setout in paragraph 4 hereinabove. Her financial condition is also weak as she is receiving only Rs.600/- per month towards maintenance from the Respondent. In the circumstances, I pass the following order :

- i. The learned Principal Judge, Family Court, Nashik is directed to transmit the papers and proceedings of the Marriage Petition No. A-394 of 2015 to the Civil Judge, Senior Division, Dhule.
- ii. The parties as well as the learned Principal Judge, Family Court, Nashik and the Civil Judge, Senior Division, Dhule to act on an authenticated copy of this order.
- iii. Parties and / or their Advocates shall appear before the Civil Judge, Senior Division, Dhule on 27th July, 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.)