

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****MISC. CIVIL APPLICATION NO. 117 OF 2014**

Sou. Puja Nilesh More ... Applicant

Versus

Shri Nilesh Shamrao More ... Respondent

Mr. Satyajeet Rajeshirke for the Applicant.

Mr. Sandip Ghogar for the Respondent.

CORAM : S.J. KATHAWALLA, J.

DATED : 9TH JUNE, 2017

P.C.:

1. The above Misc.Civil Application is filed by the Applicant Wife under Section 24 of the Code of Civil Procedure, 1908 for transfer of Hindu Marriage Petition No. 207 of 2012 filed by the Respondent Husband pending before the Civil Judge, Senior Division, Thane to the Family Court at Kolhapur.

2. The marriage between the Applicant Wife and the Respondent Husband was solemnized on 27th December, 2010 at Kolhapur. There is no issue from the said marriage. After the marriage, the Applicant resided for some time with the Respondent at Kolhapur and thereafter she started residing with the Respondent and his parents at Nerul. According to the Applicant, in the month of February-2012 the Respondent sent the Applicant back to her parental house and refused to continue with the matrimonial relations. The Applicant on 30th March, 2012 went to reside at

Nerul but the Respondent insulted the Applicant and removed her from the house. The Applicant therefore through her Advocate issued notice to the Respondent for restitution of conjugal rights. The Respondent filed the Petition being Hindu Marriage Petition No. 207 of 2012 for dissolution of marriage before the Court of Civil Judge, Senior Division, Thane.

3. The Applicant filed Marriage Petition No. 471 of 2012 under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights before the learned Civil Judge, Senior Division, Kolhapur. The Applicant also filed an Application under Section 23 of the Protection of Women from Domestic Violence Act, 2005 being Criminal Misc. Application No. 251 of 2012 before the learned JMFC, Peth Vadgaon, District Kolhapur. In the said Application, an order dated 25th March, 2013 was passed granting interim maintenance to the Applicant of Rs.4,000/- per month. It is submitted on behalf of the Applicant that the distance between Thane to Kolhapur is approximately 400 kms and it is very difficult for her to attend the proceedings at Thane filed by the Respondent. Since the Applicant is not having any independent source of income it is also financially difficult for her to attend the proceedings at Thane. The Respondent is in the employment of Mahindra G3 and earning more than Rs.25,000 - 35,000/- per month. The proceedings filed by the Applicant for restitution of conjugal rights being Petition No. 471 of 2012 is also pending before the Civil Judge, Senior Division, Kolhapur.

4. On 27th June, 2014 this Court (Coram : Ravi K. Deshpande, J.) directed

issue of notice for final hearing of the above Application returnable on 22nd August, 2014. On 28th September, 2015 this Court (Coram : K.K. Tated, J.) referred the matter for mediation. Since the disputes between the parties were not resolved, on 5th June, 2017 when the matter was called out before this Court, the Advocates for the parties were asked to proceed with the final hearing of the above Application. Though this Court heard the submissions of the learned Advocates appearing for the parties and concluded the hearing, at the request of the learned Advocates appearing for the parties, the matter was placed in my Chambers on 9th June, 2017 at 10.30 a.m. to enable the Court to speak to the parties and assist them in settling the matter before passing of the final order. Accordingly, parties are present before this Court and after a detailed discussion, it is clear that reconciliation between them is not possible.

5. From the facts narrated above and the submissions made on behalf of the parties, it is clear that the Applicant Wife is residing at Kolhapur and the distance between Thane and Kolhapur is 400 kms i.e. 800 kms to and fro and may require an overnight stay and it may not possible to undertake a return journey on the same day, necessitating an overnight stay. As against this, the Respondent would in any event be attending to the proceedings at Kolhapur filed by the Applicant for restitution of conjugal rights being Hindu Marriage Petition No. 471 of 2012 before the Civil Judge, Senior Division, District Kolhapur and which is pending. Therefore, the Respondent is employed with a reputed company and is earning a decent salary. Therefore, the financial status of the Respondent is also sound and it would be easier for him to

undertake the journey from Thane to Kolhapur. In the circumstances, I pass the following order :

- i. The learned Civil Judge, Senior Division, Thane is directed to transmit the papers and proceedings of Hindu Marriage Petition No. 207 of 2012 to the Family Court at Kolhapur.
- ii. The parties as well as the learned Civil Judge, Senior Division, Thane and the Principal Judge, Family Court at Kolhapur to act on an authenticated copy of this order.
- iii. Both the parties shall appear before the Family Court at Kolhapur on 14th July, 2017 at 11.00 a.m. and obtain appropriate orders.
- iv. The above Misc. Civil Application is allowed in the aforesaid terms, with no order as to costs.

(S.J.KATHAWALLA, J.)