

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 115 OF 2017

IN

MISC. CIVIL APPLICATION NO. 45 OF 2016

Shubhadra Pravin Yadav

... Applicant

Versus

Pravin Hariram Yadav

... Respondent

Ms. Anita Murgude for the Applicant in both applications.
None for the Respondent.

CORAM : S.J. KATHAWALLA, J.
DATED : 6TH 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 Divorce Petition No. A 1983 of 2014 filed by the Respondent-husband and pending before the Family Court at Bandra, Mumbai to the Civil Judge, Senior Division, Vasai, District Palghar.
2. According to the Applicant, her marriage was solemnized with the Respondent on 20th April, 2006 at Bandra, East, Mumbai. A child named “Yuvraj” was born to them on 24th April, 2007, who is at present in the care and custody of the Applicant. The Applicant has submitted that though the marriage between the Applicant and the Respondent is subsisting, the Respondent married one Ms. Rachana Sonawane and started residing with her. He is also having one issue through the said

Ms. Rachana Sonawane. The Applicant therefore filed a criminal case under Section 156 of the Code of Criminal Procedure, 1973 for the offences punishable under Section 494 read with Section 34 of the Indian Penal Code, 1860 being Case No. S-147 of 2014 before the JMFC at Vasai. The Applicant also filed the case being M.A. No. 894 of 2013 under Section 12 of the Protection of Women from Domestic Violence Act, 2005 before the JMFC at Vasai. Thereafter, only to harass the Applicant, the Respondent filed divorce Petition being No. A-1983 of 2014 before the Family Court at Bandra, Mumbai.

3. It is submitted on behalf of the Applicant that despite several attempts made by her to serve the above Misc. Civil Application on the Respondent, he is avoiding service and has refused to accept the same. On 19th May, 2017, the proceedings were ultimately served on the Respondent by the Family Court, Bandra, Mumbai. Though the JMFC passed an order directing the Respondent to pay to the Applicant and her minor son Rs. 2,500/- per month towards maintenance, the Respondent has failed and neglected to regularly pay the said amount to the Applicant. As on the date of filing of the above Misc. Civil Application i.e. 29th September, 2015, arrears of maintenance to the tune of Rs. 97,500/- is due and payable by the Respondent to the Applicant. The Applicant has no source of income and she is required to look after her son who is now ten years old. The criminal cases filed by her are at Vasai and the Respondent will have to attend the same before the Court at Vasai. Therefore, no prejudice will be caused to the Respondent if the divorce Petition No. A-1983 of 2014 filed by him

subsequent to the criminal cases filed by her against the Respondent, is transferred to the Court at Vasai.

4. The Respondent is residing at Malad and has also a flat at Virar. He is not paying maintenance to his wife and child as ordered by the Court. He has stated before the Family Court at Bandra, Mumbai that he was avoiding service of the above Misc. Civil Application because he has no money. He accepted service of the Misc. Civil Application on 14th May, 2017 but he has even thereafter failed to appear before this Court and has also not filed any Affidavit in Reply to the same. Since the Applicant has filed a criminal case under Section 156 of the Code of Criminal Procedure, 1973 for the offences punishable under Section 494 read with Section 34 of the Indian Penal Code, 1860 being Case No. S-147 of 2014 before the JMFC at Vasai and has also filed a case being M.A. No. 894 of 2013 under Section 12 of the Protection of Women from Domestic Violence Act, 2005 before the JMFC at Vasai, which the Respondent attends / will be attending, no prejudice will be caused to the Respondent if Petition No. A-1983 of 2014 filed by him for dissolution of the marriage between the Applicant and the Respondent is also transferred to the Court at Vasai. On the other hand, grave inconvenience and hardship will be caused to the Applicant who is required to take care of her minor child and is not receiving even the maintenance amount as ordered by the Court, if she is required to attend the proceedings at the Family Court, Bandra, Mumbai which proceedings are admittedly filed much after the Applicant filed the above cases against the Respondent before the

Court at Vasai. In the circumstances, I pass the following order :

- i. The learned Principal Judge, Family Court at Bandra, Mumbai is directed to transmit the papers and proceedings of the Divorce Petition No. A 1983 of 2014 to the Civil Judge, Senior Division, Vasai, District Palghar.
- ii. The parties as well as the learned Principal Judge, Family Court, Bandra, Mumbai and the Civil Judge, Senior Division, Vasai, District Palghar to act on an authenticated copy of this order.
- iii. Parties and / or their Advocates shall appear before the Civil Judge, Senior Division, Vasai, District Palghar on 21st August, 2017 at 11.00 a.m. and obtain appropriate orders / directions.
- iv. The above Civil Application as well as Misc. Civil Application is allowed in the aforesaid terms, with no order as to costs.

(S.J.KATHAWALLA,J.)