

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

MISCELLANEOUS CIVIL APPLICATION (ST) NO. 12094 OF 2016

Sou. Nahid-Akhtar @ Tayyab Ashpak Mulani and Anr. ...Applicants

Vs.

Ashpak Amin Mulani & Ors.Respondents

Mr. Sachin Hande for the Applicants.

None for the Respondent.

CORAM : S.J. KATHAWALLA, J.

DATED : 9th AUGUST, 2017

P.C.:

1. The above Misc. Civil application is filed by the Applicant No. 1 under Section 24 of the Code of Civil Procedure, 1908 seeking transfer of Restitution Application No. 265 of 2014 filed by her husband- Respondent No.1 and pending before the Civil Judge, Junior Division, Malshiras, Dist. Sholapur to the Court of Judicial Magistrate, First Class, Jath, Dist. Sangli. The Applicant no. 1 wife has joined the minor daughter of Applicant No.1 and Respondent No. 1 as Applicant No. 2 and has joined the family members of the Respondent No.1 as Respondent Nos.2 to 8 to the above Application.
2. The Applicant No. 1 has stated that her marriage with Respondent No. 1 took place on 26th June, 2011 at Tal. Jath, Dist. Sangli as per Muslim rights. After the marriage, the Applicant No. 1 and Respondent No. 1 were blessed with a daughter named Ayesha on 9th April, 2012 (Applicant No.2) who is now 5 years old.
3. The Applicant No. 1 has stated that on 23rd December, 2013, the Respondent refused to cohabit with Applicant No. 1 and on 15th January, 2014, he filed an

Application against Applicant No.1 for restitution of conjugal rights. The Applicant No. 1 has filed a domestic violence case No. 68 of 2014 under Sections 12, 18, 19, 20, 22 and 23 of Protection of Women from Domestic Violence Act, 2005. An ex-parte order was passed directing Respondent No. 1 to pay interim maintenance of Rs. 4,000/- per month to the Applicant No.2. At the instance of Respondent No.1, the said ex-parte order was set aside and after hearing the parties, the Learned Judicial Magistrate, First Class, Jath once again passed a detailed order dated 12th March, 2015 directing the Respondent No.1 to pay an amount of Rs.4,000/- as interim maintenance to the Applicant No.2. Except for paying an amount of Rs. 10,000/- the Respondent No. 1 has failed to pay the maintenance as ordered and therefore Applicant No. 1 was constrained to file an application under Section 128 of the Cr. P.C. to recover the maintenance amount.

4. The Applicant No. 1 has stated that she is working as a teacher at Bilur which is 15 to 20 kilometres from her residence. She has further stated that minor Ayesha is suffering from Adenoid Hypertrophy and is required to take treatment by attending Yashshree ENT Hospital at Miraj about 3 to 4 times in a month. At present the Applicant No. 2 is being treated at the Mali Children's Hospital, Miraj. The Applicant No. 1 has therefore submitted that grave inconvenience and hardship will be caused to her if she is required to travel from Jath, Dist.Sangli to the Court of Civil Judge, Junior Division, Malshiras, Dist. Sholapur, because she has a job to attend, she is required to look after the minor daughter who is 5 years old and is suffering from

serious health problems and also since the Respondent despite orders passed by the Court to pay maintenance of Rs.4,000/- per month for minor Ayesha has breached the said order and is not making payments. As against this, it is submitted by the Applicant No. 1 that the domestic case No. 68 of 2014 filed by her is pending before the Court of Judicial Magistrate's First Class Court at Jath and it will be convenient for the Applicant No. 1 to attend to both the matters if the Petition seeking restitution of conjugal rights filed by Respondent No. 1 is also transferred to the same Court.

5. The Respondents, despite service have not appeared before this Court by themselves and/or through their Advocates. They have also not filed any reply to the Application. In view thereof all that is stated by the Applicants in the above Application has remained uncontroverted. I see no reason why the same should not be accepted by this Court. In view of the aforestated facts and circumstances, I am satisfied that grave inconvenience and hardship will be caused to Applicant No. 1 if she is required to travel from Jath, Dist. Sangli to Malshiras, Dist. Sholapur to attend the application seeking restitution of conjugal rights filed by the Respondent before the Civil Judge, Junior Division, Malshiras, Dist.Solapur. Hence the following order:

- (i) Restitution Application No. 265 of 2014 filed by the Respondent-husband before the Civil Judge, Junior Division, Malshiras, Dist. Sholapur is transferred to the Court of Judicial Magistrate, First Class, Jath, Dist. Sangli.
- (ii) The Court of Civil Judge, Junior Division, Malshiras, Dist. Sholapur shall ensure that the papers and proceedings in Restitution Application No. 265 of

2014 reaches the Court of Judicial Magistrate, First Class, Jath, Dist. Sangli on or before 10th November, 2017;

- (iii) The parties and/or their Advocates shall appear before the Judicial Magistrate, First Class, Jath, Dist. Sangli, on 13th November, 2017 at 11.00 a.m. and obtain necessary directions.
 - (iv) The Judicial Magistrate, First Class, Jath, Dist. Sangli shall endeavour to dispose of Petition No. 880 of 2016 within a period of six months from 13th November, 2017.
 - (v) The Learned Judicial Magistrate, First Class, Jath, Dist. Sangli shall not grant any adjournments to the parties unless absolutely necessary. The parties too shall not apply for any adjournment unless absolutely necessary.
 - (vi) All contentions of the parties are kept open.
 - (vii) A copy of this order shall be served on the Respondent by the Advocate for the Applicant by Speed Post/Registered Post and/or by hand delivery.
- The above Misc. Civil Application is accordingly disposed off.

(S.J.KATHAWALLA, J.)