

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
MISC. CIVIL APPLICATION NO. 155 OF 2016

Mrs. Smita Meghraj Patil

... Applicant

Versus

Mr. Meghraj Hari Patil

... Respondent

Mr. V.S. Tadake i/b. Mr. D.N. Kadam for the Applicant.

Mr. Prayag Joshi i/b. Mr. Jitendra BAKliwal for the Respondent.

CORAM : S.J. KATHAWALLA, J.
DATED : 13TH 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 seeking transfer of the Hindu Marriage Petition No. 223 of 2016 filed by the Respondent Husband before the learned 5th Civil Judge, Senior Division, Jalgaon to the learned Civil Judge, Senior Division, Malegaon, District Nashik.

2. The Applicant and the Respondent were married on 16th December, 2014 at Malegaon, District Nashik. Thereafter, the Applicant started residing with the Respondent initially at Jalgaon and then at Mumbai.

3. Disputes arose between the parties on or about 12th March, 2016. The Applicant with her parents approached the Jilha Peth Police Station, Jalgaon with their complaint and an attempt was made by the police official/s to mediate between the

parties, which was not successful.

4. According to the Applicant, on 15th March, 2016 she was constrained to file a criminal complaint against the Respondent and her in laws with City Police Station, Malegaon under Sections 498A, 306, 324, 504, 506 read with Section 34 of the Indian Penal Code, 1860.

5. On 25th April, 2016 the Respondent filed a Petition under Section 13(1) of the Hindu Marriage Act, 1955, bearing Petition No. 223 of 2016 for the dissolution of the marriage before the 5th Civil Judge, Senior Division, Jalgaon on the grounds mentioned therein.

6. On 20th May, 2016 the Applicant filed Criminal Application being No. 823 of 2016 under Section 125 of the Code of Criminal Procedure, 1973 seeking maintenance from the Respondent.

7. According to the Applicant, she is pursuing her MPSC examination from her parental house at Malegaon. The distance from Malegaon to Jalgaon is about 140 kms, which involves a journey of approximately two and half to three hours (one way). There is no one who can accompany her to attend the divorce Petition at Jalgaon. She has therefore submitted that it will cause grave hardship and inconvenience to her to attend the marriage proceedings filed by the Respondent at Jalgaon. She has submitted that the Respondent being a male having sufficient earnings, it will not be difficult for him to attend to the Petition filed by him before the Civil Judge, Senior Division, Malegaon, District Nashik.

8. The Respondent has filed an Affidavit in Reply denying all the allegations made by the Applicant in her Application. He has submitted that the reasons mentioned for transfer of the Hindu Marriage Petition No. 223 of 2016 filed by him are vague and devoid of particulars. He has submitted that the Applicant is well educated and her relatives "were ever ready to accompany her for the matter of divorce". He has submitted that the distance between Malegaon to Jalgaon is only 140 km and that he is willing to pay travel charges of the Applicant. He has submitted that he has filed his Affidavit of Evidence along with the relevant documents before the learned 5th Civil Judge, Senior Division, Jalgaon. He has submitted that the Misc. Civil Application should therefore be dismissed.

9. The Respondent is present in Court. He has admitted that he is not residing at Jalgaon, where he has filed the divorce Petition but is working with Asian Paints as Researcher in Mumbai. He is residing at Navi Mumbai since the year 2012 and his salary is approximately Rs. 48,000/- per month. When this Court enquired from him as to why he has filed the divorce Petition at Jalgaon if he is residing at Mumbai, he has submitted that he has two witnesses, one of whom is his family member and the other is his neighbour at Jalgaon and it would be convenient for them if the Petition is proceeded with at Jalgaon.

10. It is therefore clear that the Respondent despite residing at Mumbai has filed the divorce Petition at Jalgaon, where his parents are residing. If he is ready to travel from Mumbai to Jalgaon to proceed with the divorce Petition filed by him, he should

be ready to travel from Mumbai to Malegaon instead of putting the Applicant to inconvenience by asking her to travel a distance of about 6-7 hours (to and fro) to attend the divorce Petition at Jalgaon. I am of the view that the convenience of the Applicant is more important than the convenience of the witnesses of the Respondent. The Respondent has submitted that he has already filed his evidence and documents and therefore the Petition is ready for trial and should not be transferred. If that be so, it is the Applicant who will have to travel all the way from Malegaon to Jalgaon for cross-examination of the Respondent and his witnesses. The Applicant who is appearing for MPSC examination and has stated that she has no one to accompany her all the way to Jalgaon, certainly cannot be put to inconvenience more particularly since the divorce Petition is admittedly filed at Jalgaon only for the convenience of the two witnesses of the Respondent who himself is admittedly residing at Mumbai. In the circumstances, I pass the following order :

- i. The learned 5th Civil Judge, Senior Division, Jalgaon is directed to transmit the papers and proceedings of the Hindu Marriage Petition No. 223 of 2016 to the Civil Judge, Senior Division, Malegaon, District Nashik.
- ii. The parties as well as the learned 5th Civil Judge, Senior Division, Jalgaon and the Civil Judge, Senior Division, Malegaon, District Nashik to act on an authenticated copy of this order.
- iii. Parties and / or their Advocates shall appear before the Civil Judge, Senior Division, Malegaon, District Nashik 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.)