

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

MISC.CIVIL APPLICATION NO. 179 OF 2016

Mrs.Prachi Santosh Kokate

...Applicant

vs.

Mr.Santosh Subhash Kokate

...Respondent

Mr.Anand J. Shinde for Applicant.

Mr.Kalpesh Patil I/b. A.R. Kapadnis for Respondent.

**CORAM : S.C. GUPTE, J.
1 MARCH 2017**

P.C.:

Heard learned Counsel for the parties.

2 This MCA seeks transfer of a pending matrimonial proceeding, being Marriage Petition No.80/2016, filed by the Respondent husband for restitution of conjugal rights from the file of Civil Judge, Senior Division, Ratnagiri to the Civil Judge, Senior Division, Kalyan. The Applicant wife resides in Dombivali. She has filed a complaint under the Protection of Women from Domestic Violence Act, which is pending before the court of Judicial Magistrate, First Class, Kalyan.

3 Learned Counsel for the Applicant submits that the Applicant is living at Dombivali with her three-year-old son, who is attending nursery school there. It is submitted that the son suffers from some physical ailments and a surgery has been performed on him recently. It is submitted that the Respondent is a businessman and he can very well afford to travel from Sangameshwar, where he resides, to the court of C.J.S.D., Kalyan. It is submitted that, on the other hand, with a little son to

attend to, it is very difficult for the Applicant to undertake the journey from Dombivali to Ratnagiri for every hearing and also arrange an accommodation in Ratnagiri, since to and fro journey between the two places cannot be accomplished during a day. Learned Counsel for the Applicant submits that he is agreeable to have the pending complaint under the Domestic Violence Act transferred to the court of C.J.S.D., Kalyan so that the two proceedings could be heard together.

4 The application is opposed by the Respondent husband by filing a reply. It is submitted that the Respondent husband has undergone a surgery on his left ankle and due to his medical problems, it is inconvenient for him to undertake the journey from Sangameshwar to Kalyan. From the reply, it appears that the surgery was performed on the Respondent's left ankle in 2014 and that thereafter again a procedure for exploratory curating and biopsy was performed in January 2016. On these facts, it cannot be said that the Respondent is unable to undertake the journey from Sangameshwar to Kalyan. In any event, for attending his petition he has been travelling from Sangameshwar to Ratnagiri. Besides, in any event, he has to attend the pending complaint under the Domestic Violence Act filed by the Applicant before J.M.F.C. at Kalyan.

5 On these facts, considering that both proceedings, namely, the Applicant's application under the Domestic Violence Act and the Respondent's petition for restitution, in which common questions arise and common evidence is likely to be led, can be conveniently heard together by the court of C.J.S.D., Kalyan, the MCA is allowed in terms of prayer clause (b).

6 It is also directed that the Applicant's application, being Application No.81/2016, pending before the court of Judicial Magistrate, First Class at Kalyan shall stand transferred to the court of C.J.S.D., Kalyan, and the transferred petition for restitution and the transferred application under the Domestic Violence Act shall be heard together by the court of C.J.S.D, Kalyan.

(S.C. GUPTE, J.)