

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
MISC. CIVIL APPLICATION NO. 185 OF 2016

Sou. Pallavi Vinayak Ghatge ... Applicant

Versus

Shri Vinayak Yashvant Ghatge ... Respondent

Mr. Mahindra Deshmukh i/b. Shrikant Yadav for the Applicant.
Ms. Vaishali Patil for the Respondent.

CORAM : S.J. KATHAWALLA, J.
DATED : 5TH JULY, 2017

P.C.:

1. The above Misc.Civil Application is filed under Section 24 of the Code of Civil Procedure, 1908 by the Applicant Wife for transfer of the Marriage Petition No.1324 of 2015 filed by the Respondent Husband from the Civil Judge, Senior Division, Kalyan to the Family Court, Kolhapur.
2. According to the Applicant, she has filed the Hindu Marriage Petition A No. 58 of 2016 in Family Court, Kolhapur seeking decree of restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955 against the Respondent.
3. The Applicant has submitted that she and her son Aditya, who is in the second standard are residing at Kolhapur with her parents. The distance between Kalyan and Kolhapur is 400 kms (one way) and would require her to undertake an overnight journey. The family members of the Applicant are not keeping good health

and there is no one to accompany her whilst travelling the distance of 800 kms (to and fro) i.e. from Kolhapur to Kalyan on the adjourned dates. Even otherwise, she is financially dependent on her parents and is unable to bare the travel expenses as well as the boarding and lodging expenses. She has therefore submitted that the Marriage Petition No. 1324 of 2015 filed by the Respondent be transferred from the Court of Civil Judge, Senior Division at Kalyan to the Family Court, Kolhapur.

4. The Respondent has filed his Affidavit in Reply and has submitted that the Marriage Petition A No. 58 of 2016 filed by the Applicant seeking a Decree of restitution of conjugal rights is a mere counter blast to the proceedings filed by him for dissolution of marriage before the Court at Kalyan. He has submitted that the reasons given by the Applicant in support of her case that the Marriage Petition filed by the Respondent should be transferred to Kolhapur, are false, perverse and baseless. The Respondent has submitted that the Applicant is well-educated and has earlier travelled from Thakurli to Kolhapur. Her contention is false that her parents cannot accompany her to Kalyan on the adjourned dates. He states that their son – Aditiya is not required in the proceedings before the Kalyan Court. He has submitted that road accessibility and train frequency is effortless from Kolhapur to Kalyan and prior to the litigation/s the Applicant has travelled using these routes as admitted by her in the Petition. Though he has submitted that it is well settled position that poor financial condition and paucity of funds can be grounds to seek relief with regard to transfer of Petition, according to him no hardship would be caused to the Applicant to attend the

proceedings before the Kalyan Court. He has submitted that if the Marriage Petition No. 1324 of 2015 is transferred to Kolhapur, it would cause hardship to him as well as his witnesses to attend the trial at Kolhapur.

5. Admittedly, the Applicant and her minor son, who is seven years old and in 2nd Standard are residing with the parents of the Applicant at Kolhapur. The Applicant has stated in her Application that her parents are sick and it is difficult for her to travel this long distance (800 kms to and fro) on every adjourned date. The Respondent has made general statement/s in his Affidavit that the contentions and averments made in the above Application by the Applicant are false and baseless. Though he has stated that it is well settled position that poor financial condition and paucity of funds are grounds to seek relief of transfer of the Marriage Petition No. 1324 of 2015, he has not specifically denied the contention of the Applicant that she is financially dependent on her parents and will not be able to contest the proceedings at Kalyan. Just because the Applicant has stated that in the past she had occasionally travelled from Thakurli to Kolhapur, does not mean that despite the responsibility on her qua the minor child, who is seven years old, the contention now made by her that it will cause grave inconvenience and hardship if she is required to travel 800 kms on every adjourned date is false / incorrect. Without mentioning any reason as to why hardship would be caused to him if he has to travel from Kalyan to Kolhapur, the Respondent has made a bald statement that it will cause grave hardship and injustice to him. The Respondent has also callously stated that the child is not required to be

brought at Kalyan but has failed to appreciate the difficulty faced by the Applicant to undertake an overnight travel / journey from Kolhapur to Kalyan thereby leaving the child who is seven years old in the care of her sick parents. Only because, hardship will be caused to the witnesses of the Respondent, the inconvenience and hardship caused to the Applicant, cannot be overlooked / ignored. In the circumstances, I am of the view that if the relief sought by the Applicant is not granted, grave hardship and inconvenience will be caused to her, whereas as stated earlier no case of hardship or inconvenience is made out by the Respondent if the above Application is allowed as prayed. I therefore pass the following order :

- i. The learned City Civil, Senior Division, Kalyan is directed to transmit the papers and proceedings of Petition No. 1324 of 2015 filed by the Respondent to the Family Court at Kolhapur.
- ii. The parties as well as the learned Civil Judge, Senior Division, Kalyan and the Principal Judge, Family Court at Kolhapur to act on an authenticated copy of this order.
- iii. The parties and/or their Advocates shall appear before the Family Court at Kolhapur on 19th 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.)