

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
MISC. CIVIL APPLICATION NO. 173 OF 2015

Mrs. Sarabjeet Yogesh Sandhu ... Applicant

Versus

Mr. Yogesh Kashmirilal Sandhu ... Respondent

Mr. Yogendra Pendse for the Applicant.

Mr. A.B. Tajane a/w. Mr. Y.G. Thorat 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. 534 of 2015 filed by the Respondent Husband before the learned Civil Judge, Senior Division, Pune to the learned Principal Judge, Family Court, Thane.

2. The Applicant and the Respondent were married on 18th April, 2011 at Vashi, Navi Mumbai. There is a male child named "Eshaan" born to the Applicant and the Respondent on 7th September, 2012. He is presently about four years old. In September-2014, the Applicant returned to her parental home and since then she and her minor son are residing with her parents.

3. According to the Applicant, her parents are old and have health problems.

She is required to look after them and is therefore unable to leave her minor son who is four years old under their care.

4. The Respondent had filed Civil Misc. Application No. 983 of 2014 under Section 21 of the Hindu Guardians and Wards Act, 1890 before the District Court at Pune on 8th November, 2014. However, by an order dated 26th June, 2015 the same was dismissed with costs for want of jurisdiction.

5. The Applicant has also filed an Application under Section 12 of the Protection of Women from the Domestic Violence Act, 2005, which is presently adjudicated before the Court of JMFC, CBD Belapur, Navi Mumbai.

6. The Respondent thereafter filed the Marriage Petition No. 534 of 2015 before the 5th Civil Judge, Senior Division, Pune seeking restitution of conjugal rights.

7. According to the Applicant, the Respondent who is residing at Pune is having good income and is financially well of, he has no liabilities and it will be convenient for him to attend the proceedings at Thane but grave inconvenience and hardship will be caused to her if she is required to travel from Vashi to Pune with her infant child and her father, who is of advanced age and who is also not keeping good health. It is submitted that no prejudice will be caused to the Respondent if the above Application is allowed as prayed.

8. The Respondent has filed his Affidavit in Reply dated 7th January, 2016. Thereafter attempts were made to assist the parties in arriving at an amicable settlement with the help of the Mediator.

9. On 23rd August, 2016, this Court (Coram : R.D. Dhanuka, J.) recorded that the parties have failed to arrive at an amicable settlement and the failure report submitted by the Mediator was taken on record. This Court therefore directed that the above Application be placed on board for hearing and final disposal on 6th September, 2016.

10. Today, the above Application is taken up for hearing and final disposal.

11. The Respondent in his Affidavit in Reply has inter alia submitted that the Applicant contested proceedings under the Hindu Guardians and Wards Act, 1890 at Pune, which ultimately got rejected by an order dated 20th June, 2015. The same is under challenge before the High Court in Writ Petition No. 8666 of 2015. It is submitted that the Applicant is an MBA and is working as Senior Software Engineer, earning more than five lacs per year and since she is a "healthy bodied lady", she can travel to Pune. The Respondent has submitted that her family members can take care of the minor son " Eshaan". He has submitted that the distance between Pune and Vashi is 118 km and it will only take two and half hours for her to reach the Court at Pune.

12. I have considered the submissions advanced on behalf of the Applicant and the Respondent. The Applicant has separated from the Respondent since 11th September, 2014 and is residing with her minor son (four years old) at her parental home. The Respondent first filed the Civil Misc. Application No. 983 of 2014 at Pune seeking custody of the minor child, which as stated hereinabove was dismissed for

want of jurisdiction.

13. Admittedly, the Applicant is a working lady, who is required to take care of her job as well as the minor son, who is four years old as also her aged parents who are not keeping good health. The Respondent has himself stated in his Affidavit in Reply that the Applicant has to work from Monday to Friday from 9 a.m. to 6 p.m. The Respondent has in his Affidavit in Reply not disputed that he is required to attend the proceedings filed by the Applicant against him under the Protection of Women from the Domestic Violence Act, 2005 at Vashi, Navi Mumbai. He has in his Reply not made a whisper qua any inconvenience that would be caused to him if the Hindu Marriage Petition No. 534 of 2016 is transferred to the Family Court at Thane from Pune. I am therefore satisfied that if the prayer as sought in the above Application is not granted, grave inconvenience and hardship will be caused to the Applicant. In the circumstances, I pass the following order :

- i. The learned Civil Judge, Senior Division, Pune is directed to transmit the papers and proceedings of the Hindu Marriage Petition No. 534 of 2015 to the Principal Judge, Family Court, Thane.
- ii. The parties as well as the learned Civil Judge, Senior Division, Pune and the Principal Judge, Family Court, Thane to act on an authenticated copy of this order.
- iii. Parties and / or their Advocates shall appear before the Principal Judge, Family Court, Thane 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.)