

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

**CIVIL APPLICATION NO. 225 OF 2016
IN
MISC.CIVIL APPLICATION NO. 53 OF 2015**

Smt.Shivani Rakesh Dhamale ...Applicant/Respondent No.1.

In the matter between

Shri Nitin Sadanand Dhamale & Ors. ...Applicants

vs.

Shivani Rakesh Dhamale & Ors. ...Respondents

Mr.Sachin P. Shetye for Applicant.
None for Respondent.

CORAM : S.C. GUPTE, J.

13 JANUARY 2017

P.C. :

Heard learned Counsel for the Applicant (who is the original Respondent, i.e. Respondent No.1 to the original Misc.Civil Application).

2 The MCA was for transfer of Regular Suit No.77/2014 filed by the Applicant herein before the Court of Civil Judge, Junior Division, Mangaon to the City Civil Court at Mumbai. The MCA was allowed by this court by order dated 25 January 2016. This Court, however, directed the Applicants in the MCA to compensate the Applicant herein (Respondent No.1 to the MCA) by payment of Rs.2000/- for each of the hearings to be conducted in Mumbai. Such payment was to be made to the present Applicant on each of the dates of hearing in cash. This court also made it

clear that such payment was to be made whether the matter was heard on the date of hearing or was adjourned. This Court also reserved liberty unto the Applicant herein to apply for vacating the transfer order in the event of the Applicants' in MCA committing any default in payment of this amount.

3 It is pointed out by the Applicant herein in her civil application that there have been as many as four dates of hearing as of the date of the application and even thereafter there have been four more dates of hearing of the suit before the City Civil Court at Bombay. On all these dates, the Plaintiff was present except the date of 20 August 2016. In spite of her attendance in the court for the hearing almost on all the dates (save and except one), the Respondents herein (Applicants in the original MCA) have not paid the sum of Rs.2000/- to the Applicant on any of these dates. In fact, it appears from the Roznama produced by the Applicant herein that the Respondents were absent on most of the dates. The Applicant, in the premises, prays for vacating the order of transfer in terms of the liberty reserved by this court in its order dated 25 January 2016.

4 This civil application has been duly served on the Respondents. Though acknowledgement of receipt of court notice is still awaited, the application has been privately served by the Applicant on the Respondents on two occasions. This court, by its order dated 6 December 2016, permitted the Applicant to serve the Respondents by private notice and file an affidavit of service before the next date. The Applicant has duly served the Respondents after this order and filed an affidavit of service in proof of such service. Despite such service, the Respondents are absent. There is no cause shown to the present civil application by the Respondents by filing any reply thereto.

5 In the premises, the civil application is allowed by vacating the order of transfer passed by this court on 25 January 2016. Accordingly, Suit No.768/2016 pending before the City Civil Court at Mumbai shall stand re-transferred to the court of Civil Judge, Junior Division, Mangaon.

6 The Respondents are also directed to pay the sum of Rs.14,000/- to the Applicant within a period of four weeks from today. The payment of such costs shall be a condition precedent for allowing the Respondents to appear before the Mangaon court.

7 The civil application is disposed of accordingly.

(S.C. Gupte, J.)