

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
MISC. CIVIL APPLICATION NO. 202 OF 2016

Sou. Neelima Mahendra Koli ... Applicant

Versus

Shri Mahendra Pandharinath Koli ... Respondent

Mr. Rajan Pawar for the Applicant.
None for the Respondent.

CORAM : S.J. KATHAWALLA, J.
DATED : 27TH JUNE, 2017

P.C.:

1. By the above Misc. Civil Application filed under Section 24 of the Code of Civil Procedure, 1908, the Applicant-wife seeks transfer of the Hindu Marriage Petition No. 85 of 2016 filed by the Respondent-husband and pending before the Civil Judge, Senior Division, Bhusaval to the Civil Judge, Senior Division, Niphad.

2. According to the Applicant, the marriage between her and the Respondent was solemnized on 23rd February, 2003. After the marriage, two sons namely “Chirag” and “Vedant” are born to the Applicant and the Respondent. Both the children are in the care and custody of the Applicant. “Chirag” is in 7th Standard, whereas “Vedant” is handicapped and suffering from several ailments. The Applicant has submitted that the distance between Niphad to Bhusaval is more than 250 kms (one way). There is no connectivity available through railway. Since Niphad is a very

small place only few trains halt at Niphad Railway Station. It is very difficult for the Applicant to travel from Niphad to Bhusaval along with her two children and her father who is 65 years old, who will have to escort her and her children to Bhusaval. The Applicant has submitted that due to her son's infirmity, she cannot work and she is required to look after both her minor sons. She has therefore submitted that grave inconvenience and hardship will be caused to her, if the relief as sought in the above Misc. Civil Application is not granted, whereas no such inconvenience or hardship will be caused to the Respondent who is working in Dhake Madyamik Vidyalay Aingaon, Taluka – Bodwad, District – Jalgaon and getting salary of Rs.35,000/-

3. As can be seen from the Affidavit proving service dated 8th March, 2017 filed by the Advocate for the Applicant, the Respondent has been served with a copy of the above Misc. Civil Application. Despite service, the Respondent has neither filed his Affidavit in Reply nor come forward to defend the above Misc. Civil Application. In view thereof, in the absence of any defence or contest by the Respondent, the averments contained in the Misc. Civil Application have remained uncontroverted. I see no reason why the statements / submissions made by the Applicant in the above Misc. Civil Application should not be accepted. In the circumstances, I am satisfied that grave inconvenience and hardship will be caused to the Applicant, if the relief sought in the above Misc. Civil Application is not granted. In the circumstances, I pass the following order :

i. The learned Civil Judge, Senior Division, Bhusaval is directed to transmit

the papers and proceedings of the Hindu Marriage Petition No. 85 of 2016 to the Civil Judge, Senior Division, Niphad.

- ii. The parties as well as the learned Civil Judge, Senior Division, Bhusaval and the Civil Judge, Senior Division, Niphad to act on an authenticated copy of this order.
- iii. Parties and / or their Advocates shall appear before the Civil Judge, Senior Division, Niphad on 21st August, 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.)