

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****MISCELLANEOUS CIVIL APPLICATION NO. 213 OF 2015**

Sou. Namrata Pankaj Ojha

...Applicant

Vs.

Pankaj Radhesham Ojha

....Respondent

ALONG WITH**MISC. CIVIL APPLICATION (ST.) NO. 22261 OF 2017**

Pankaj Radhesham Ojha

... Applicant

Vs.

Sou. Namrata Pankaj Ojha

...Respondent.

*Mr. V.V. Purwant for the Applicant in MCA No. 213 of 2015.**Mr. Ajay Basutkar, along with Ashwini Gadgil for the Applicant in MCA (St.) No. 22261 of 2017.***CORAM: S. J. KATHAWALLA, J.****DATE: 9th August, 2017****P.C.:**

1. Misc. Civil Application No. 213 of 2015 is filed by the Applicant wife – Namrata Pankaj Ojha under Section 24 of the Code of Civil Procedure, 1908 (CPC), seeking transfer of P.A. No. 1238 of 2014 filed by her husband - Pankaj Radhesham Ojha for dissolution of marriage between the Applicant and the

Respondent, before the Family Court, Pune to the Family Court at Sholapur.

2. Misc. Civil Application (St.) No. 22261 of 2017 is filed by the Applicant – Pankaj Radhesham Ojha against his wife Namrata Pankaj Ojha under Section 24 of the CPC seeking transfer of Case No. 184 of 2015 filed by the Respondent wife for restitution of conjugal rights, before the Family Court at Sholapur to the Family Court at Pune.

3. In Misc. Civil Application No. 213 of 2015, the Applicant wife has stated that her marriage with the Respondent was solemnised on 18th April, 2008. The Respondent is highly educated and is employed as Vice-President, Sales in a well-known Company and earning more than Rs. 3 lakhs towards his monthly salary. After the marriage, the Applicant and the Respondent were blessed with two twin daughters on 26th September, 2010. One of the daughters passed away immediately on birth and the other daughter is named Lakshita, who is now about 7 years old. On 6th June, 2013, the couple was blessed with a son named Apurva.

4. The Applicant has stated that due to disputes between her and the Respondent, she left the matrimonial home in the month of February, 2013. On 8th November, 2014, the Respondent filed P.A. No. 1238 of 2014 before the Family Court, Pune, seeking dissolution of marriage between the Applicant and the Respondent. The Applicant too has filed Case No. 184 of 2015 before the

Family Court, Sholapur seeking restitution of conjugal rights. In the said Application, the Applicant has made an application seeking interim maintenance which till date is pending, she has no independent income and is completely relying on her parents, who themselves are living a hand to mouth existence. The custody of Lakshita is with the Respondent and the custody of Apurva is with the Applicant. The Respondent despite earning a salary of Rs. 3 lakhs per month has not paid a single rupee to the Applicant towards maintenance of herself and minor Apurva. The Applicant has therefore submitted that grave inconvenience and hardship will be caused to her if she is required to travel from Sholapur to Pune along with her child who is now about 4 years old. She has therefore submitted that Misc. Civil Application No. 213 of 2015 be allowed and the Petition seeking divorce filed by the Respondent husband before the Family Court, Pune, be transferred to the Family Court at Sholapur. She has also submitted that Misc. Civil Application filed by the Respondent be dismissed.

5. The Respondent husband in Misc. Civil Application (St.) No. 22261 of 2017 has submitted that he is residing at Chennai and since his parents are suffering from serious health issues, he is required to take care of minor Lakshita. He has also submitted that the distance between Chennai and Sholapur is approximately 825 kilometres and there is no direct flight from Chennai to Sholapur. However, the distance between Sholapur and Pune is 253 kilometres,

the Applicant wife can therefore travel a distance of 253 kms and attend to the matters before the Family Court at Pune. The Respondent has therefore submitted that the Misc. Civil Application filed by the Applicant wife be dismissed and the Misc. Civil Application filed by him seeking transfer of the Petition seeking restitution of conjugal rights filed by his wife before the Family Court, Sholapur be transferred to the Family Court at Pune.

6. I have considered the submissions advanced on behalf of the Applicant as well as the Respondent. The Applicant is residing with her minor son at Sholapur since the year 2013. Her son is approximately 4 years old. She has no independent source of income. She has stated that despite her parents being extremely poor, she is required to further burden them with the expenses required to be incurred on her and her minor child for their survival. The Respondent husband in his affidavit has denied that he is earning Rs. 3 lakhs per month as alleged but has very conveniently not mentioned his monthly income. He has also not denied that he has not paid a single rupee towards the maintenance of his wife and minor son since the year 2013. Even at this stage, he is not offering to give some monthly amount to his wife and child for their survival but he wants his wife to file proceedings and fight for her right as well as the right of minor Apurva to receive maintenance from the Respondent. In order to ensure that he is not inconvenienced, though he is not paying a single

rupee to his wife and child since the year 2013 towards their maintenance, he states that he will pay the travel expenses for his wife to travel from Sholapur to Pune. The Respondent who has sought transfer of all the proceedings before the Family Court at Pune, in any event will have to travel from Chennai to Pune to pursue the divorce petition filed by him against his wife. Though he has contended that he will have to spend four days if he is required to attend the proceedings at Sholapur, he has conveniently avoided to state as to how many days he will have to spend if he has to travel from Chennai to Pune to pursue the divorce proceedings. Again though he has stated that his parents are old and ailing and are unable to look after his daughter who is 7 years old and who is in his custody, he has conveniently not stated as to who is looking after the daughter when he is at work and further who will look after the daughter when he undertakes the journey from Chennai to Pune to attend the divorce proceedings filed by him before the Family Court at Pune.

7. In my view, if the Respondent can travel all the way from Chennai to Pune, he certainly can travel from Chennai to Sholapur, if the divorce proceedings are transferred to the Family Court at Sholapur and heard along with the Petition filed by the wife seeking restitution of conjugal rights before the Family Court at Sholapur. The Applicant is a lady who has no independent source of income and is admittedly not paid any amount towards the

maintenance of herself and minor son Apurva since the year 2013 by the Respondent husband. Therefore, much more inconvenience and hardship will be caused to the Applicant wife if she is required to travel all the way from Sholapur to Pune as against the inconvenience and hardship that will be caused to the Respondent who in any event will be required to travel from Chennai to Pune to pursue the divorce proceedings filed by him against the Applicant. Hence the following order:

- (i) Petition No. 1238 of 2014 filed by the Respondent-husband before the Family Court, Pune is transferred to the Family Court, Sholapur.
- (ii) The Application filed by the husband seeking transfer of Case No. 184 of 2015 filed by the Respondent wife before the Family Court at Sholapur to the Family Court at Pune, is rejected.
- (iii) The Registrar, Family Court, Pune shall ensure that the papers and proceedings in Petition No. 1238 of 2014 reaches the Family Court, Sholapur on or before 3rd November, 2017;
- (iv) The parties and/or their Advocates shall appear before the Family Court on 6th November, 2017 at 11.00 a.m. and obtain necessary directions.
- (v) The Family Court, Sholapur shall endeavour to dispose of Petition No. 1238 of 2014 and Case No. 184 of 2015 seeking restitution within a period of nine months from the date of this order.

- (vi) The Family Court, Sholapur, shall not grant any adjournments to the parties unless absolutely necessary. The parties too shall not apply for any adjournment unless absolutely necessary.
- (vii) All contentions of the parties are kept open.

The above Misc. Civil Application is accordingly disposed off.

(S.J. KATHAWALLA, J.)