

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
MISCELLANEOUS CIVIL APPLICATION NO. 271 OF 2016

Mrs.Jyotsana Dilip Wagh	...	Applicant
Versus		
Shri. Dilip Madhukar Wagh	...	Respondent

Ms. Swapna Kode for the Applicant.
None for the Respondent.

CORAM : S.J. KATHAWALLA, J.
DATED : 16TH JUNE, 2017

P.C.:

1. By the above Miscellaneous Civil Application filed under Section 24 of the Code of Civil Procedure, 1908, the Applicant-wife seeks transfer of Marriage Petition No.MHJG0500343 of 2015 filed by the Respondent-husband pending before the Civil Judge Senior Division, Jalgaon to the Civil Judge Senior Division, Kalyan at Thane.
2. On 06.06.2017, the Advocate for the Applicant informed this Court that though the copy of above Miscellaneous Civil Application was sought to be served on the Respondent on 04.04.2017 by hand-delivery, he has refused to accept the same. It was further submitted that thereafter, a copy of the above Application was served on the Respondent through Courier which he has received on 05.06.2017, but chooses not to appear in the Court. In view thereof, on 06.06.2017 this Court passed the following order :

“Office to forthwith issue notice to the Respondent by Speed Post AD stating that the Advocate for the Applicant has informed the Court that a copy of the above Application was sought to be served on him on 4th April, 2017 by hand delivery which he refused to accept. Thereafter, a copy of the above Application has been received by him on 5th June, 2017 through Courier. In view thereof, the above Application is placed for hearing and final disposal, at the stage of admission, on 16th June, 2017. If the Respondent fails to appear on the adjourned date, the Court shall proceed to hear the Application finally and pass appropriate orders. A copy of this order shall also be forthwith forwarded to the Respondent.”

3. A copy of the order served by the Court Office is received by the Respondent on 14.06.2016, however, he has today failed to remain present by himself and/or his Advocate. I have therefore, proceeded to hear the above Application in the absence of the Respondent.

4. The marriage between the Applicant and Respondent was solemnized on 20.02.2003. According to the Applicant, since she was not able to conceive, she was meted with cruel treatment by her in-laws. In the year 2007, the Respondent and his family members obtained her signature on a Petition for divorce by mutual consent and dropped her to her parental home at Ulhasnagar. Though the Applicant, her parents and brother tried to contact her in-laws and also the Respondent, they avoided the calls and only in the year 2010 when she filed an Application seeking maintenance, the Respondent attended the Court and took the Applicant back to her matrimonial

home just to save himself from paying any maintenance as claimed.

5. The Applicant again received cruel treatment from the Respondent and she was again driven out from her matrimonial home. She is therefore, residing at her parental home at Ulhasnagar, she has no source of income and is dependent upon her brother for her livelihood.

6. The Respondent thereafter, filed a Petition seeking divorce before the Learned Civil Judge Senior Division, Jalgaon being No. MHJG0500343 of 2015.

7. According to the Applicant, her entire family resides at Mumbai and it would cause grave inconvenience and hardship to her to travel to Jalgaon from Mumbai on every adjourned date, more so, since despite an Order dated 01.08.2016 passed by the Court at Ulhasnagar under the Protection of Women from the Domestic Violence Act, 2005 filed by the Applicant against the Respondent, to pay Rs.4000/- per month to the Applicant, the Respondent has not paid a single rupee to the Applicant towards her maintenance. It is submitted on behalf of the Applicant that no prejudice will be caused to the Respondent since he is already attending the proceedings filed by the Applicant under the Protection of Women from the Domestic Violence Act, 2005 before the Ulhasnagar Court almost every month. It is submitted that the Respondent is earning well and is in a position to attend the proceedings if transferred to Ulhasnagar.

8. As stated earlier, the Respondent has repeatedly failed to remain present before this Court though he has received a copy of the above Application forwarded to

him by the Advocate for the Applicant through Courier and has also received the notice as directed by this Court by its order dated 06.06.2017. As submitted by the Applicant, she is residing with her parents since the last three years. It will cause her grave inconvenience and hardship to travel all the way from Ulhasnagar to Jalgaon to defend the Marriage Petition filed by the Respondent before the Civil Judge Senior Division, Jalgaon. Again, her financial condition is very weak and she is unable to sustain herself, since she has not received a single rupee from the Respondent towards maintenance despite an order of the Court dated 01.08.2016 directing him to pay an amount of Rs.4000/- to the Applicant every month towards her maintenance. It is therefore, impossible for her to pay the travel expenses as well as the boarding and lodging expenses for herself and an escort at Jalgaon, on every adjourned date. As against this, the Respondent is already attending the proceeding filed by the Applicant under the Protection of Women from the Domestic Violence Act, 2005 at Ulhasnagar.

9. In the circumstances, the following order is passed.

(a) The Marriage Petition being No.MHJG0500343 of 2015 filed by the Respondent-husband is directed to be transferred from the Civil Judge Senior Division, Jalgaon to the Civil Judge Senior Division, Kalyan, Thane.

(b) The Civil Judge Senior Division, Jalgaon is directed to transmit the papers and proceedings of Marriage Petition No. MHJG0500343 of 2015 to the Court of Civil Judge Senior Division, Kalyan, Thane.

(c) The parties as well as the Civil Judge Senior Division, Jalgaon and the Civil

Judge Senior Division, Kalyan, Thane to act on an authenticated copy of this Order ;

(d) The parties and/or their Advocates shall appear before the Court of Civil Judge Senior Division, Kalyan, Thane on 27th July, 2017 at 11.00 a.m. and obtain appropriate orders/directions.

10. Miscellaneous Civil Application is allowed in the aforesaid terms, with no order as to costs.

(S.J.KATHAWALLA, J.)