

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10120 OF 2017

Smt.Dia Nitin Magnani

..... Petitioner

VERSUS

Nitin Ashok Magnani

..... Respondent

Mr.J.M.Puranik for the Petitioner.

CORAM : G.S.KULKARNI, J.

DATE : 14th SEPTEMBER, 2017

P.C.

Heard learned counsel for the petitioner. The challenge in this petition is to the order dated 28th July,2017 passed by the learned Principal Judge, Family Court at Mumbai dismissing Civil Misc. Application No.69 of 2017 by which the petitioner had prayed for transfer of the proceedings of Petition No.A-1628 of 2012 in R.D. No.613 of 2014 from the Family Court No.3 to any other court. The principle premise on which the application came to be moved can be seen in the paragraphs 6, 7 and 9 of the application which reads thus :-

6. The applicant states that on 20.02.2017 she issued notice to opponent and called upon the opponent husband to pay the arrears and make appropriate compliance of the order of Hon'ble court. The opponent failed to deposit arrears of maintenance as per notice until this date.

7. The applicant states that on 04.03.2017 the applicant as respondent moved application exh.39 under provisions of rule 11 of order 39 of code of civil procedure disclosing all the facts. The applicant states that she observed that the Hon'ble Judge Shri Ganatra ignored the application as probably he had special interest in the matter to give early divorce to the petitioner – opponent and passed an order of No Cross at exh.38.

9. The applicant states that in such circumstances the applicant has honest apprehensions that her contest stands decided against her before trial, if the matter is heard and decided by the present Family court no.3 Judge Shri Ganatra who appears to have special interest in the matter and who is in hurry to decide the matter.

2. The learned Principal Judge considering the nature of the application and the ambit of the powers under section 24 of the Code of Civil Procedure to pass orders of transfer observed that such power would be required to be exercised only in a fit and of proper case and not on the basis of the judicial proceedings and judicial orders. Such approach certainly cannot be said to be erroneous or perverse in the Principal Judge rejecting the transfer application. On a perusal of the impugned order it is quite clear that the learned Principal Judge has applied settled judicial principles in considering such transfer applications. There is no case made

out by the petitioner for intervention of this Court to exercise its jurisdiction under Article 227 of the Constitution. The petition is devoid of merits and is rejected. No costs.

(G.S.KULKARNI, J.)