

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
MISCELLANEOUS CIVIL APPLICATION NO. 3 OF 2017

Mrs. Anjum Ara Dargha ... Applicant

Versus

Mr. Mohsin Riyaz Mulla ... Respondent

Ms. Sandhya Mailgir i/by Anil Joshi for the Applicant.

Mr. Kedar Lad for the Respondent.

CORAM: S.J. KATHAWALLA, J.

DATED : 25th SEPTEMBER, 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 Petition No. A-56 of 2016 filed by the Respondent-husband seeking restitution of conjugal rights pending before the Family Court at Kolhapur to the Court of appropriate jurisdiction at Kalyan, District : Thane.

2. The marriage between the Applicant and the Respondent was solemnized on 25.05.2012 according to Muslim Law at Kolhapur. The couple was blessed with a girl child named Sophia on 4th July, 2013. Since disputes arose between the parties, the Applicant left the matrimonial home and started residing separately along with her parents from 26.01.2016. On 10.03.2016, the Applicant-wife filed an Application under the Protection of Women From Domestic Violence Act, 2005 being PWDV M.A. No.56 of 2016 before the Judicial Magistrate, First Class, Ulhasnagar. The

Respondent filed Petition being No.56 of 2014 seeking restitution of conjugal rights before the Family Court at Kolhapur.

3. The Applicant submits that to reach the Family Court at Kolhapur, she is required to travel approximately 500kms. (one way) from her residence at Ambernath. The same would involve an overnight journey. To undertake the overnight journey alongwith her minor daughter who is about four years old would cause grave inconvenience and hardship to her. Even otherwise, the Respondent has till date not paid a single rupee to the Applicant who is unemployed and is totally dependent on her aged parents. The Applicant is therefore unable to bear the travel expenses as well as boarding and lodging expenses at Kolhapur during each date of hearing. As against this, the Respondent is attending/shall be attending the Miscellaneous Civil Application filed by the Applicant being PWDV M.A. No.56 of 2016 before the Judicial Magistrate First Class at Ulhasnagar under the Protection of Women From Domestic Violence Act, 2005. The Applicant-wife has therefore submitted that the above application be allowed.

4. Though a copy of the above Miscellaneous Civil Application is served on the Respondent, he has failed to appear before the court. The Advocate for the Respondent states that the Respondent has not come forward to give any instructions, despite a message being sent to him seeking instructions in the above Application. The Respondent-husband has also not filed his Affidavit-in-Reply to the above Application. In view thereof, what is stated by the Applicant in her Application has

remained uncontroverted. I see no reason why the submissions made by the Applicant in the above Application should not be accepted. I am therefore satisfied that grave inconvenience and hardship will be caused to the Applicant if she is required to travel from Ambernath to Kolhapur on every adjourned date. In the circumstances, I pass the following Order.

- (a) The Petition being No. A-56 of 2016 filed by the Respondent-husband is directed to be transferred from the Family Court, Kolhapur to the Court of Civil Judge, Senior Division, Kalyan.
- (b) The Registrar, Family Court at Kolhapur shall ensure that the papers and proceedings of Petition No. A-56 of 2016 reaches the Court of Civil Judge, Senior Division, Kalyan, on or before 10th October, 2017.
- (c) The parties and/or their Advocates shall appear before the Court of Civil Judge, Senior Division, Kalyan on 12th October, 2017 at 11.00 a.m. and obtain appropriate orders.
- (d) The Court of Civil Judge, Senior Division, Kalyan shall endeavour to dispose off the Petition No. A-56 of 2016 within a period of six months from the date of this Order.
- (e) The parties shall not seek adjournment/s unless absolutely necessary. The Court of Civil Judge, Senior Division, Kalyan shall also not grant adjournment/s to either side unless absolutely necessary.
- (f) The parties as well as the Family Court at Kolhapur and the Court of Civil

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

- (g) All contentions of the parties are kept open.
 - (h) The Advocate for the Applicant shall serve a copy of this order on the Respondent by Speed Post/Registered Post A.D. and/or by hand-delivery.
5. The above Miscellaneous Civil Application is accordingly disposed off.

(S.J.KATHAWALLA, J.)