

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

MISCELLANEOUS CIVIL APPLICATION NO.302 OF 2016

Mrs. Pooja Nishad Javir ...Applicant

vs.

Mr. Nishad Baban Javir ...Respondent

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Mr. N.N. Gavankar, a/w. Mr. Manas N. Gawankar, for the Applicant.

Mr. Sagar Anant Joshi, for the Respondent.

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CORAM : S.C. GUPTE, J.

DATED : 22 MARCH 2017

P.C. :

. Heard learned Counsel for the parties.

2. This Miscellaneous Civil Application seeks transfer of a matrimonial proceeding, being M.J. Petition No.A-318/16, filed by the Respondent husband for restitution of conjugal rights and which is pending before the Court of Principal Judge, Family Court at Thane, to the Court of Civil Judge, Senior Division at Ratnagiri.

3. A petition for divorce filed by the Applicant wife at a prior point of time, being M.J. Petition No.71 of 2016, is pending before the Court of Civil Judge, Senior Division at Ratnagiri. It is the case of the Applicant that the Marriage Petition for restitution is filed by the Respondent only as a counterblast. It is submitted that the Applicant has been residing at Ganpatipule, Taluka and District Ratnagiri, since the break off with the Respondent husband. She is residing at her parental

home, pursuing Hotel and Tourism Management studies at Ratnagiri. It is submitted that Ganpatipule is 400 kms. away from Thane and there is no facility of railway. It is submitted that the Applicant has to travel by State Transport bus, which takes nearly 11 hours to reach Thane. The Applicant is unemployed and has no source of income. It is submitted that it is not possible for the Applicant, being a lady, to travel to Thane alone in a whole night journey and she has to request someone to accompany her. It is submitted that she has no near relations in Thane. In these circumstances, it is not feasible for her to attend hearings before the Family Court at Thane. There is no reply to the Miscellaneous Civil Application. Learned Counsel submits that no reply was filed because the parties were in the midst of settlement talks all this while. Be that as it may, on the facts recounted above, considering that the petition for divorce filed by the Applicant wife is prior in point of time, when it is in the interest of justice that the two petitions, which give rise to common questions and where common evidence is likely to be led, should be heard by one Court, it should rather be the Court of Civil Judge, Senior Division at Ratnagiri, which should hear the petitions, than the Family Court at Thane.

3. Accordingly, the Miscellaneous Civil Application is allowed in terms of prayer clause (a). Needless to add that the observations made in this order are only for the purpose of deciding the Miscellaneous Civil Application and the matrimonial proceedings shall be considered by the Court at Ratnagiri on their merits, without reference of these observations.

(S.C. GUPTE, J.)