

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

MISC. CIVIL APPLICATION NO. 13 OF 2017

Mrs. Mallika Kanetkar ... Applicant

Versus

Dr. Parijat Kanetkar ... Respondent

Ms. Jai Vaidya for the Applicant.

Mr. Rajendra Pai a/w. Ms.N.N. Thakkar i/b. Bina Pai for the Respondent.

CORAM : S.J. KATHAWALLA, J.

DATED : 19TH JUNE, 2017

P.C.:

1. By the above Misc. Civil Application filed under Section 24 of the Code of Civil Procedure, 1908, the Applicant-wife seeks transfer of Marriage Petition No. 1980 of 2016 filed by the Respondent-husband and pending before the Family Court, Bandra, Mumbai to the Family Court at Amravati.
2. The marriage between the Applicant and the Respondent was solemnized on 18th February, 2014 . A son named 'Ayaan' was born to them on 25th October, 2014.
3. The dispute between the parties reached such an extent that the Applicant left the matrimonial home without taking the minor child with her. According to the Applicant, despite requests, the child was not handed over to her by the Respondent and his family members. The Applicant therefore filed the proceedings under the Protection of Women from Domestic Violence Act, 2005 bearing DV Case No. 98 of 2015 before the JMFC Court, Amravati and for restitution of conjugal rights under the

Special Marriage Act, 1954 before the Family Court, Amravati.

4. According to the Applicant, vide order dated 8th October, 2015, the JMFC directed the Respondent to handover the custody of the child to the Applicant. The Respondent preferred an Appeal before the Sessions Court at Amravati against the said order dated 8th October, 2015. The Applicant filed a Writ Petition before the Nagpur Bench of this Court and by an order dated 3rd August, 2016, the Sessions Court at Amravati was directed to decide the Appeal filed by the Respondent, before 31st August, 2016. By an order dated 31st August, 2016, the Sessions Court at Amravati confirmed the order dated 8th October, 2015 passed by the JMFC at Amravati and directed the Respondent to handover the custody of the child to the Applicant.

5. It is submitted on behalf of the Applicant that the child, who was a per-matured baby, needs her constant care and attention. It is not possible for her to leave the child with her parents and travel a distance of 1362 kms (to and fro) to attend the proceedings filed by the Respondent at Mumbai, which proceedings are filed by the Respondent only after the Applicant filed the proceedings against him seeking restitution of conjugal rights before the Family Court at Amravati and also under the Protection of Women from Domestic Violence Act, 2005 before the JMFC at Amravati. The Applicant has submitted that grave inconvenience and hardship will be caused to her, if she is required to travel from Amravati to Mumbai along with her three year old child to attend the proceedings filed by the Respondent before the

Family Court at Bandra, Mumbai. She has submitted that the Respondent has been defending the proceedings effectively before the Family Court at Amravati and the Court of JMFC at Amravati and at no point of time has sought transfer of any of the matters. It is therefore submitted that the above Misc. Civil Application be allowed.

6. The Respondent has filed his Affidavit in Reply, wherein he has denied the allegations made by the Applicant in the above Misc. Civil Application. He has submitted that he is working in Mumbai and cannot travel all the way to Amravati. He has submitted that grave prejudice will be caused to his work, if he frequently proceeds to Amravati.

7. I have considered the submissions advanced on behalf of the parties.

8. The Advocates for the parties have informed the Court that the Video Conferencing facility is not available in the Family Court at Amravati. The Applicant is required to take care of her three old child, who was per-matured baby and needs her constant care and attention. She is unable to leave her child and travel 1362 kms (to and fro) to attend to the divorce proceedings filed by the Respondent at Mumbai. The Applicant has much prior to the divorce proceedings filed by the Respondent before the Family Court at Bandra, Mumbai, filed the proceedings for restitution of conjugal rights before the Family Court at Amravati and has also filed proceedings under the Protection of Women from Domestic Violence Act, 2005 at Amravati. The Respondent is effectively defending both the proceedings at Amravati and has not made any Application seeking transfer of the same.

9. In the circumstances, I am of the view that the Applicant-wife will face grave inconvenience and hardship, if she is required to attend the proceedings filed by the Respondent at Bandra, Mumbai (filed subsequent to the proceedings filed by the Applicant at Amravati) by travelling a distance of 1362 kms (to and fro) leaving her three year old child behind . The Respondent is admittedly defending the Petition filed by the Applicant-wife seeking restitution of conjugal rights and also the proceedings filed under the Protection of Women from Domestic Violence Act, 2005, at Amravati. The Respondent therefore can also attend the divorce proceedings in the same Court, which is also hearing the Petition filed by the Applicant seeking restitution of conjugal rights at Amravati and which is defended by the Respondent. In the circumstances, I pass the following order :

- i. The learned Principal Judge, Bandra, Mumbai is directed to transmit the papers and proceedings of the Marriage Petition No. 1980 of 2016 to the Principal Judge, Family Court, Amravati.
- ii. The parties as well as the learned Principal Judge, Family Court, Bandra, Mumbai and the Principal Judge, Family Court, Amravati to act on an authenticated copy of this order.
- iii. Parties and / or their Advocates shall appear before the Principal Judge, Family Court, Amravati on 27th July, 2017 at 11.00 a.m. and obtain appropriate orders / directions.
- iv. The above Misc. Civil Application is allowed in the aforesaid terms, with no

order as to costs.

(S.J.KATHAWALLA, J.)