

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

**MISCELLANEOUS CIVIL APPLICATION NO. 260 OF 2017**

Ms. Pooja Channbasveshwar Hatti and others ...Applicants

Versus

Rakesh Khemchand Narwani ....Respondent

Mr. Shriram Choudhari for the Applicant.

None for the Respondent.

**CORAM : S.J. KATHAWALLA, J.**  
**DATED : 18<sup>th</sup> SEPTEMBER, 2017**

**P.C.:**

1. The above Miscellaneous Civil Application is filed by the Applicants under Section 24 of the Code of Civil Procedure, 1908 (CPC), seeking transfer of proceedings filed by the Respondent against the Applicants bearing Regular Civil Suit No. 25 of 2013 before the Learned Civil Judge, Junior Division, Lakhandur, Dist. Bhandara to the Court of Civil Judge, Junior Division, Solapur and the Misc. Judicial Case No. 65 of 2014 along with the Application under Order 43 Rule 3 (A) of the CPC seeking condonation of delay in filing Appeal out of judgment and order dated 13<sup>th</sup> October, 2014, passed in Regular Civil Suit No. 25 of 2013 pending before the learned District Judge, Bhandara, to District Court, Solapur.

2. According to the Applicants, the circumstances under which the above Miscellaneous Application is filed are as under:

2.1 That on 2<sup>nd</sup> May, 2013, the Respondent filed Regular Civil Suit No. 25 of 2013 before the Learned Civil Judge, Junior Division, Lakhandur, Dist. Bhandara, for the

following reliefs :

*“(i) That the Hon’ble Court may kindly be pleased to declare that Defendant No. 1 is legally wedded wife of the Plaintiff and Defendant Nos. 2 to 9 have no right or authority to forcibly perform second illegal marriage of Defendant No. 1 with some other persons. It may kindly be declared that Defendant No. 1 cannot perform her second illegal marriage to any other person.*

*(ii) Hon’ble Court may also be pleased to restrain Defendant Nos. 2 to 9 permanently from forcibly performing the second illegal marriage of Defendant No. 1 with some other person through themselves, their agents, assignees or any other person or persons claiming on their behalf. Hon’ble Court may further be pleased to restrain Defendant No. 1 permanently from performing her second illegal marriage with any other person.”*

**2.2** That the Applicants appeared in the suit and filed their written statement on 13<sup>th</sup> January, 2014 and denied the suit claim.

**2.3** That the Applicants raised preliminary objection regarding the jurisdiction of the Lakhandur Court. The trial Court framed preliminary issue regarding the jurisdiction of the Court to entertain and try the said suit and held that the Court had jurisdiction to entertain and try the suit filed by the Respondent as the cause of action for declaration of marriage arose within the jurisdiction of the trial Court.

**2.4** That the Applicant No. 1 on 24<sup>th</sup> May, 2013, lodged FIR No. 139 of 2013 against the Respondent and other accused persons with the Sadar Bazar Police Station, Solapur under Sections 376 (2) (f), 354 (A) (i), 354 (c), 328, 465, 468, 471,

419, 199, 200, 504, 506 and 507 read with Section 34 of the IPC and Section 33 (d), (e) and (a) of the Information Technology Act, 2000. The trial arising out of FIR No. 139 of 2013 lodged by the Applicant No. 1 against the Respondent and others is pending before the Sessions Court, Solapur.

**2.5** That the Respondent applied for anticipatory bail bearing Criminal Misc. Application No. 664 of 2013 in the Court of Sessions Judge, Solapur on 30<sup>th</sup> May, 2013. In the said application, the Respondent mentioned that he is the resident of Solapur. He also filed several documents including a Marriage Registration Certificate. However, during the course of investigation by the police in the FIR lodged by Applicant No. 1 at Sadarbazar Police Station, Solapur, it is revealed that the documents such as marriage registration certificate, etc. are forged and bogus.

**2.6** That it therefore appears that on the basis of such forged and fabricated documents, the Respondent has filed Civil Suit No. 25 of 2013 before the Lakhandur Court against the Applicants for the reliefs set out hereinabove.

**2.7** That the Respondent in his Suit No. 25 of 2013 filed before the Court of Civil Judge, Junior Division, Lakhandur filed an Application (Exhibit-5) for grant of a temporary injunction to restrain the Applicant Nos. 2 to 9 from performing second marriage of Defendant No. 1 on the ground that the Applicant is his legally married wife to which the Applicants filed their reply (Exhibit-48) denying the contention of the Respondent. The Learned Civil Judge, Junior Division, Lakhandur framed the following issues viz.

- (i) Whether the Plaintiff has prima facie case ?;
- (ii) Whether the balance of convenience lies in favour of the Plaintiff ?;
- (iii) Whether the Plaintiff will suffer irreparable loss, if temporary injunction is not granted ?; and
- (iv) What order ?

**2.8** By his detailed order dated 13<sup>th</sup> October, 2014, the Learned Civil Judge, Junior Division, Lakhandur answered all the issues in the negative and rejected the Application filed by the Respondent. The Learned Judge has in his order recorded that the copy of the affidavit of the Tahsildar filed by the Respondent in respect of the marriage deed is false and therefore the marriage registration certificate which is issued on the basis of the said affidavit of the Tahsildar has no value at the interim stage. The Learned Judge has further held that the documents filed by the Plaintiff creates doubts and *prima facie* do not show the Applicant No. 1 as the legally wedded wife of the Respondent.

**2.9** That the Respondent has filed Misc. Judicial Case No. 6 of 2014 along with an Application under Order 43 Rule 3 (A) of the CPC for condonation of delay in filing of the Appeal against the order dated 13<sup>th</sup> October, 2014, passed by the Civil Judge, Junior Division, Lakhandur which is pending before the learned District Court, Bhandara.

**2.10** The Applicants thereafter have filed the above Misc. Civil Application seeking transfer of the proceedings as set out in paragraph (1) hereinabove.

3. It is submitted on behalf of the Applicants that the Respondent has filed Regular Civil Suit No. 25 of 2013 before the Civil Judge, Junior Division, Lakhandur with *mala fide* intentions and only to harass the Applicants and it is therefore necessary to transfer the said suit before the Court at Solapur. The Applicants have further submitted that the Respondent is a resident of Solapur and also carrying on business at Solapur. However, the Respondent despite being aware of the fact that the Applicants are residents of Solapur filed Regular Civil Suit No. 25 of 2013 before the Lakhandur Court knowing that the Applicants will not be able to travel to Lakhandur Court which is more than 700 kilometres away from Solapur to attend the proceeding in Regular Civil Suit No. 25 of 2013 filed by the Respondent. It is submitted that some of the Applicants are lady members of the family and it will be very difficult for them to undertake a journey of more than 1400 kilometres (to and fro) for which they will also need to arrange an overnight stay at Lakhandur. The Applicants have also submitted that they have reasonable apprehension that the Respondent and/or his family members or anyone on their behalf may pose a threat to the lives of the Applicants when the Applicants attend the proceedings filed by the Respondent before the Court at Lakhandur. It is therefore submitted that the above Misc.Civil Application be allowed.

4. The Respondent is served with a copy of the Misc. Civil Application and the orders passed by this Court. However, the Respondent has failed to appear before this Court by himself and/or through his Advocate. He has also not filed his affidavit in

reply. In view thereof what is stated by the Applicants has remained uncontroverted and I see no reason as to why the same should not be accepted.

5. Considering the above facts narrated by the Applicants, I am of the view that grave inconvenience and hardship will be caused to the Applicants if they are required to travel a distance of 1400 kilometres (to and fro) from Solapur to Lakhandur. Hence the following order:

- (i) The above Misc. Civil Application is allowed in terms of prayer clause (a) which is reproduced hereunder:

*“(a) This Hon’ble Court be pleased to transfer the proceeding bearing Regular Civil Suit No. 25 of 2013 filed by the Respondent which is pending before the Ld. Civil Judge, Junior Division, Lakhandur, Dist. Bhandara to Civil Judge, Junior Division, Solapur and the Misc. Civil Appeal No. 40 of 2016 arising out of judgment and order dated 13<sup>th</sup> October, 2014 passed below Exh. 5 in the Regular Civil Suit No. 25 of 2013 filed by the Respondent pending before the learned District Judge, Bhandara to District Judge, Solapur.*

- (ii) The Registrar, Ld. Civil Judge, Junior Division, Lakhandur, Dist. Bhandara shall ensure that the papers and proceedings being Regular Civil Suit No. 25 of 2013 reaches the Court of Civil Judge, Junior Division, Solapur on or before 10<sup>th</sup> November, 2017.
- (iii) The Registrar, Court of District Judge, Bhandara shall ensure that the papers and proceedings being Misc. Civil Appeal No. 40 of 2016 arising out of judgment and order dated 13<sup>th</sup> October, 2014 passed below Exh. 5 in the Regular Civil Suit No. 25 of 2013 reaches the Court of District Judge, Solapur

on or before 10<sup>th</sup> November, 2017.

- (iv) The parties and/or their Advocates shall appear before the Civil Judge, Junior Division, Solapur and also the Court of District Judge, Solapur on 13<sup>th</sup> November, 2017 and after producing a copy of this order obtain necessary directions.
- (v) A copy of this order shall be forthwith sent through speed post/registered post A.D. to the Respondent by the Advocate for the Applicants.

The above Misc. Civil Application is accordingly disposed off.

( S.J.KATHAWALLA, J. )