

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
MISC. CIVIL APPLICATION NO. 286 OF 2015

Sou. Snehal Sachin Suttar ... Applicant

Versus

Shri Sachin Shivaji Sutar ... Respondent

Mr. Kedar Lad for the Applicant.
None 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 the Marriage Petition No. A-73 of 2015 filed by the Respondent-husband pending before the Family Court, Thane to the Family Court, Kolhapur and prays that the same be heard alongwith Petition No. E-290 of 2015 filed by the Applicant-wife seeking maintenance from the Respondent-husband.

2. The Applicant and the Respondent were married on 20th May, 2014. According to the Applicant, since disputes arose between the parties, she was driven out from her matrimonial home by the Respondent and the members of his family on 1st October, 2014. Left with no alternative, the Applicant started residing with her parents at Kolhapur.

3. On 10th February, 2015 the Respondent filed Marriage Petition No. A-73 of 2015 before the Family court at Thane seeking annulment of his marriage with the Applicant.

4. According to the Applicant, she is unemployed and has no source of income. She is totally dependent on her family members for her livelihood. The financial condition of her parents is also not good. The Applicant therefore filed Petition No. E-290 of 2015 for maintenance under Section 125 of the Code of Criminal Procedure, 1973 before the Family Court at Kolhapur. Though the Respondent is by an order dated 10th August, 2016 directed to pay an amount of Rs.15000/- per month to the Applicant, he has failed to do so.

5. It is submitted on behalf of the Applicant that the distance between her parental home and the Court before which the Marriage Petition is filed by the Respondent is 400 kms i.e. 800 kms to and fro and therefore, she is required to undertake a journey involving an overnight stay. It is not possible for her to undertake such journey on her own and her parents being old cannot accompany her. She has no one in her family to escort her from Thane to Kolhapur for every hearing of Marriage Petition No. A-73-2015 pending before the Family Court, Thane. Even otherwise she has no source of income to travel from Kolhapur to Thane on every adjourned date. The Applicant has submitted that the native place of the Respondent is Village – Sasegaon, Taluka – Shahuwadi, District – Kolhapur, where the Respondent has a house and four acres of irrigated agricultural land. For the purpose of managing his

agricultural land, the Respondent visits Kolhapur every month. Hence, it will not be difficult for him to attend the hearings if the Marriage Petition filed by him is transferred to Kolhapur.

6. The Court Office as well as the Applicant were unable to serve the above Application on the Respondent for a period of two years. Therefore, this Court on 6th June, 2017 passed the following order :

“1. The above Application is taken out by the Applicant wife seeking directions for transfer of Marriage Petition No.A-73/2015 filed by the Respondent husband for annulment of marriage in the Family Court, Thane, to be transferred to the Family Court at Kolhapur and to be heard with Petition -E-290/2015 filed by the Applicant wife against the Respondent for maintenance in Family Court at Kolhapur.

2. Despite two years having passed, the Applicant is unable to serve a copy of the above Application on the Respondent. A copy of this order shall be served on the Advocate for the Respondent Ms. Savita Bhate, who is representing the Respondent before the Thane Court in Marriage Petition No.A-73/2015. Advocate Ms. Savita Bhate shall forthwith provide the current address and telephone number of the Respondent to the Advocate for the Applicant.

3. Stand over to 13th June, 2017.”

7. Thereafter, on 14th June, 2017 this Court after reproducing its order dated 6th June, 2017 passed an order, paragraphs 2 and 3 of which are relevant and reproduced hereunder :

“2. Pursuant thereto, Advocate Savita Bhate has forwarded the address and phone number of the Respondent as follows :

*“Mr. Sachin Sutar, Parvati Niwas,
Pandey Chawl, Near Warden Company
Road No.15, Hajuri Gaon, Wagale, Estate
Thane.*

Phone No.97027 40496”

3. Though the Advocate for the Applicant has attempted to serve the proceeding on the same address, the same is returned back with the remark 'N.A.' i.e. not available. In view thereof, Advocate Savita Bhate who is representing the Respondent before the Thane Court in Marriage Petition No.A-73 of 2015 filed by the Respondent, shall inform the Respondent to remain present before this Court on 16th June, 2017 at 3.00 p.m., failing which the Court shall proceed to hear the above Misc. Civil Application at the stage of admission and pass appropriate orders in the matter. Advocate Savita Bhate shall inform the Advocate for the Applicant whether she has conveyed the message to the Respondent. Stand over to 16th June, 2017 at 3.00 p.m.”

8. Thereafter, Advocate Savita S. Bhate sent the following email to the Advocate for the Applicant :

“Received your email dated 15-06-2017. Immediately I attempted to contact Mr. Sachin Sutar. But as usual I kept receiving a message 'call ended'. In spite of repeated attempts, I was unable to contact him. At last, I contacted his brother Mr. Nitin Sutar (8082542928). I intimated about order of Court and explained him also. He assured me that he will intimate about today's hearing to Sachin Sutar. All this has been already

informed to you.”

9. However, today the Respondent has not remained present. The Advocate for the Applicant was asked to leave the Court hall and enquire from the brother of the Respondent, over the phone, whether he had conveyed the message given to him by Advocate Savita Bhate to the Respondent. Accordingly, the Advocate for the Applicant spoke to the brother of the Respondent, who confirmed having passed on the message given by Advocate Savita Bhate, to the Respondent.

10. From the aforeostated facts, it is clear that the Respondent in order to cause harassment to the Applicant is not responding to the calls made by his own Advocate and is also not present before this Court despite having received the message about today's hearing. It is also clear from the submissions made on behalf of the Applicant that the Applicant is residing with her parents and is totally dependent on them for her sustenance. She has also submitted that the financial condition of her parents is not “so good”. As pointed out by her, the distance between Kolhapur and Thane is 800 kms (to and fro) and therefore for every hearing before the Thane Court, she will be required to undertake an overnight journey, which will cause grave inconvenience and hardship to her. Even otherwise she is unable to bare the travel expenses as well as the expenses towards her boarding and lodging. Though the Respondent is by an order dated 10th August, 2016 directed to pay Rs.15,000/- per month to the Applicant towards ad-interim maintenance, he has till date failed and

neglected to make any payment and has wilfully breached the said order dated 10th August, 2016. As against this, the Respondent will be attending the proceedings filed by the Applicant seeking maintenance before the Family Court at Kolhapur being Petition No. E-290 of 2015 filed under Section 125 of the Code of Criminal Procedure, 1973. The Applicant has also submitted that the Respondent is working in a Software Company and earns a substantial salary. He has a house at Kolhapur and four acres irrigated agricultural land and he visits Kolhapur every month.

11. In the circumstances, I am satisfied that if the Petition filed by the Respondent before the Family Court at Thane is not transferred as prayed for by the Applicant, the same will cause grave inconvenience and hardship to the Applicant, whereas transferring the said proceedings will not cause inconvenience to the Respondent because he is already required to attend the maintenance proceedings filed by the Applicant at Kolhapur, he has his own house at Kolhapur and for reasons set out hereinabove is financially sound. I therefore pass the following order :

- i. The learned Principal Judge, Family Court at Thane is directed to transmit the papers and proceedings of Petition No. A-73 of 2015 filed by the Respondent to the Family Court at Kolhapur.
- ii. The parties as well as the learned Principal Judge, Family Court at Thane and the Principal Judge, Family Court at Kolhapur to act on an authenticated copy of this order.
- iii. Parties and / or their Advocates shall appear before the Family Court at

Kolhapur on 27th July, 2017 at 11.00 a.m. and obtain appropriate orders.

iv. The above Misc. Civil Application is allowed in the aforesaid terms, with no order as to costs.

(S.J.KATHAWALLA, J.)