

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
MISCELLANEOUS CIVIL APPLICATION NO. 299 OF 2016

Mrs. Kajal Deepak Agrawal ... Applicant

Versus

Mr. Deepak Dinesh Agrawal ... Respondent

Ms. Chaitrali Deshmukh for the Applicant.

None for the Respondent.

CORAM : S.J. KATHAWALLA, J.

DATED : 23RD JUNE, 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 Marriage Petition/ P.A. No. 286 of 2016 filed by the Respondent-husband seeking divorce pending before the Family Court, Pune to the Family Court at Nashik.
2. The Applicant and the Respondent were married on 22.02.2014. There is one child (son) born to the Applicant and the Respondent on 09.06.2016 who is now one year old.
3. Since the matrimonial disputes arose between the parties, on and from 20.10.2015, the Applicant-wife started residing at her parental home at Nashik.
4. The Applicant filed an application being No.45 of 2016 against the Respondent before the Judicial Magistrate, Nashik under Sections 12, 18, 19, 20, 22 and 23 of the Prevention of Women from Domestic Violence Act, 2005 (in short 'Domestic Violence Act').

5. According to the Applicant, after receiving notice from the Court in the case filed by her under the Domestic Violence Act, the Respondent filed Marriage Petition/P.A. No.286 of 2016 before the Family Court at Pune seeking dissolution of marriage between the Applicant and the Respondent. According to the Applicant, to defend the proceedings at Pune, she has to undertake a journey of approximately five hours. She is also required to take her child alongwith her who is now one year old and who will not stay with her mother in her absence. Her father is working as a labourer, whose financial condition is very weak, he has taken loans from other individuals for the medical expenses which were required to be incurred during her pregnancy. Even otherwise, she is unemployed and dependent upon her parents and does not have any source of income. She does not have means to travel from Nashik to Pune.

6. As against this, the Respondent is a businessman having income of Rs.50,000/- per month and the Respondent is also required to come to Nashik to attend the proceedings filed by her under the Domestic Violence Act. It is, therefore, submitted that grave inconvenience and hardship will be caused to the Applicant, if the above Application is not allowed, whereas no such inconvenience or hardship will be caused to the Respondent if the Application is allowed. The balance of convenience is in favour of the Applicant.

7. By an Order dated 20th December, 2016, this court (Coram : R.D. Dhanuka, J.) had directed that the above Miscellaneous Civil Application be placed for hearing

and final disposal on 17th January, 2017. Despite the Application being served on the Respondent, neither he has come forward to defend the above Application nor has he filed his Affidavit-in-Reply to the above Miscellaneous Civil Application. The Affidavit of service filed by the Clerk working in the Office of the Advocate for the Applicant dated 13.01.2017 is on record.

8. I have considered the submissions advanced on behalf of the Applicant. The Applicant is residing with her child who is now one year old. It would certainly be inconvenient for her to undertake a journey of approximately five hours (one way) alongwith her one year old child to Pune where the Respondent has filed divorce petition after being served with a notice by the Court before which the Applicant has filed proceedings under the Domestic Violence Act. Even otherwise, the Applicant is unemployed and she as well as her child are completely dependent on her father whose financial condition too is very weak. As against this, the Respondent is a businessman whose income according to the Applicant is about Rs.50,000/- per month. In any event, the Respondent is required to attend to the proceedings filed by the Applicant before the Court of Judicial Magistrate at Nashik under the Domestic Violence Act. The balance of inconvenience is completely in favour of the Applicant and against the Respondent. Hence, the following order :

(a) The Marriage Petition/P.A.No. 286 of 2014 filed by the Respondent-husband is directed to be transferred from the Family Court at Pune to the Family Court at Nashik.

(b) The Family Court at Pune is directed to transmit the papers and proceedings of Marriage Petition/P.A.No. 286 of 2014 to the Family Court at Nashik.

(c) The parties as well as the Family Court at Pune and the Family Court at Nashik to act on an authenticated copy of this Order ;

(d) The parties and/or their Advocates shall appear before the Family Court at Nashik on 21st August, 2017 at 11.00 a.m. and obtain appropriate orders/directions.

9. The Miscellaneous Civil Application is allowed in the aforesaid terms, with no order as to costs.

(S.J.KATHAWALLA,J.)