

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO.2/2015

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. Piyush N. Shah for the applicant

CORAM : K. K. TATED, J.
DATE : DECEMBER 15, 2017

P.C.:

1. None for the Respondent though duly served. Today the matter is shown on board for final hearing. Ad-interim relief has already been granted in terms of prayer clause (b) on 03.07.2015.

2. The Misc. Civil Application is filed by wife u/s.24 of the Code of Civil Procedure, 1908 for transfer of HMP No.270/2014 filed by the Respondent husband u/s.9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights before the Civil Judge, Senior Division, Satara to the Family Court, Bandra, Mumbai.

3. The learned counsel for the Applicant submits that the Applicant does not have any

source of income. He submits that the Applicant is residing at Malad, Mumbai. He submits that the distance between Mumbai and Satara is more than 400 km. He submits that the Applicant has a minor daughter of 4 years. He submits that it is very difficult for the Applicant to travel along with minor daughter on each and every date to Satara to attend the petition filed by the Respondent husband for restitution of conjugal rights. In support of this contention, he relies on para 11, which reads thus:

“11. The Applicant states that the Applicant is from a poor family and the Respondent is not maintaining the Applicant nor her daughter. The Applicant also states that with the small child of 15 months it is not possible for the Applicant to travel to Satara time and again for the petition filed there. The Respondent, the husband of the Applicant is able to travel to Mumbai since the Respondent was working initially in Mumbai.”

4. The learned counsel for the Applicant submits that though the Respondent is duly served, none appeared for them when the matter was called out. He submits that this itself shows that the Respondent has no objection if the matter is transferred from Satara to the Family Court, Bandra, Mumbai. He submits that in the interest of justice this Hon'ble Court be pleased to allow

the Misc. Civil Application. He submits that if it is not allowed irreparable loss would be caused to the Applicant and it would be very difficult for her to protect her interest.

5. It is to be noted that the distance between Satara and Mumbai is more than 400 km. Apart from that the Applicant has to take care of her minor daughter of 4 years. The Applicant does not have any source of income. Not only that though the Respondent is duly served, none appeared on behalf of him.

6. The Respondent has also made an Application u/s.12 of the Protection of Women from Domestic Violence Act, 2005 being C.C.No.494/2014 in the 67th Metropolitan Magistrate Court, Borivali, Mumbai which is still pending. In any case, the Respondent has to attend the criminal case at Mumbai. Considering these facts, I am of the view that the Applicant has made out a case for allowing the Misc. Civil Application.

7. Hence, following order is passed.

a. The Misc. Civil Application is allowed in terms of prayer clause (a) which reads thus:

“(a) that this Hon'ble Court be pleased to transfer the Application being H.M.P Application No.270/2014 for restitution of conjugal rights filed by the Respondent before the Civil Judge, Senior Division Satara to the Family Court Bandra.”

- b. The Misc. Civil Application stands disposed of accordingly.
- c. No order as to costs.

JUDGE