

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

MISCELLANEOUS CIVIL APPLICATION NO.19 OF 2017

Sou. Sujata Prakash Nikam ...Applicant
vs.
Shri Prakash Ganpatrao Nikam ...Respondent

Mr. Vasant D. Raut, for the Applicant.

Mr. Vinayak Gadekar, for Respondent No.1.

CORAM : S.C. GUPTE, J.

DATED : 22 FEBRUARY, 2017

P.C. :

Heard learned Counsel for the parties.

2. This Miscellaneous Civil Application seeks transfer of an application under the Hindu Minority and Guardianship Act filed by the Respondent herein for declaration of guardianship and custody of two minor children of the parties from the District Court at Karad to the District Court at Pune.

3. The application is on the footing that a divorce petition filed under Section 13-B between the parties is pending before the District Court at Pune. It is also submitted that the Applicant wife has filed a miscellaneous criminal application under Section 12 of the Protection of

Women from Domestic Violence Act, 2005 (“Domestic Violence Act”) for various reliefs before the Court of Judicial Magistrate, First Class, Pimpri, Pune. It is submitted that the learned Judicial Magistrate was pleased to reject that application and granted only visiting rights to her once in a month. It is submitted that the Applicant has filed a criminal appeal, being Miscellaneous Criminal Appeal No.482 of 2016, in the Sessions Court at Pune under Section 29 of the Domestic Violence Act. It is submitted that, these proceedings, that is to say, the divorce petition under Section 13-B as well as the Miscellaneous Criminal Appeal under Section 29, are being attended by the Respondent at Pune. The application also takes up a position that the Applicant's parents being old and her brothers being in service, no one in the family is available to accompany her to attend each and every date in the pending application under the Hindu Minority and Guardianship Act before the District and Sessions Court at Karad.

4. The Respondent opposes this Miscellaneous Civil Application. In his affidavit-in-reply, it is submitted that it is the District Court at Karad, which alone has jurisdiction to entertain the application filed by him under the Hindu Minority and Guardianship Act, since as per Section 9 of that Act it is only that Court, within whose jurisdiction the minor ordinarily resides, has jurisdiction to hear the application concerning guardianship. It is submitted that the minors here are residents of Karad. It is also submitted that the only matrimonial proceeding, which is effectively pending before the District Court at Pune, is the consent divorce petition filed under Section 13-B by the parties. It is submitted that the Applicant has already withdrawn

her consent to this petition and that accordingly effectively there is nothing to be contested before the District Court at Pune. In other words, it is submitted that the current pendency of the matrimonial petition under Section 13-B of the Hindu Marriage Act is only for the sake of form. It is also submitted that the Applicant has already filed an application before the District Court at Karad for an order of reimbursement of her expenses for attending the court case at Karad.

5. On these rival submissions, it is not possible to accept the Applicant's case for transfer of the pending application under the Hindu Minority and Guardianship Act from the District Court at Karad to the District Court at Pune. There is effectively no contested matrimonial proceeding in District Court at Pune. The only effective proceeding in Pune is the Miscellaneous Criminal Appeal filed by the Applicant before that Court from the Court of JMFC, Pimpri, which has, in any event, no jurisdiction to decide any application under Hindu Minority and Guardianship Act or under the Guardians and Wards Act. In my opinion, in the facts of the case, interests of justice would be adequately served if the Respondent is directed to pay the Applicant a reasonable amount towards her expenses for attending the proceedings at Karad. The Respondent, through his Counsel, agrees to pay a sum of Rs.2000/- towards the Applicant's costs for attending each date of hearing before the District Court at Karad.

6. The Miscellaneous Civil Application is, accordingly, dismissed. The Respondent shall pay a sum of Rs.2000/- to the Applicant each time she visits Karad for attending the hearing of G.W.

Application No.47 of 2016 pending before the District and Sessions Court at Karad.

7. It is clarified that the present order directing reimbursement of the Applicant's expenses for attending the hearings at Karad is only an adhoc arrangement and shall not come in the way of the Applicant seeking appropriate orders regarding her maintenance or for legal expenses before that Court or any other appropriate Court.

(S.C. GUPTE, J.)