

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
MISC. CIVIL APPLICATION NO. 43 OF 2017

Mrs. Jayshree Hansraj Pawar ... Applicant

Versus

Mr. Hansraj Lotan Pawar ... Respondent

Mr. Jitendra Patil for the Applicant.

Mr. Mahesh Chandan Shiv for the Respondent.

CORAM : S.J. KATHAWALLA, J.

DATED : 16TH 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 Marriage Petition No. 1099 of 2016 filed by the Respondent Husband seeking divorce, pending before the Court of the Civil Judge, Senior Division at Pune to any other Court of competent jurisdiction at Nasik.

2. The Applicant and the Respondent were married on 7th May, 2012. There is one child born to the Applicant and the Respondent on 19th November, 2014.

3. Since the matrimonial disputes arose between the parties, the Applicant Wife started residing at her parental home at Nasik on and from 25th February, 2015.

4. On 3rd September, 2015 the Respondent filed Marriage Petition No. 1099 of 2016 seeking divorce before the Court of Civil Judge, Senior Division, 15th Court at

Pune.

5. On 24th November, 2016 the Applicant filed the Application under the Protection of Women from Domestic Violence Act, 2005 against the Respondent.

6. According to the Applicant, her parents are old and suffering from several ailments. Since her brother is working, she is required to take care of not only her son who is about two and a half years old but also her old and ailing parents. The distance between her parental home and the Court before which the Marriage Petition is filed by the Respondent is 210 kms i.e. 420 kms (to and fro) and therefore, she is required to undertake a journey involving 10 to 12 hours. She may therefore also be required to arrange an overnight stay which is not possible since her child cannot be left without her for long hours. Though according to her the Respondent is earning Rs.40,000/- to Rs.45,000/- per month, she has been awarded interim maintenance of only Rs.2,500/- per month, which is absolutely inadequate for the sustenance of herself and her minor child. It is therefore even financially impossible for her to travel all the way to Pune on the adjourned dates and to also engage the services of an Advocate at Pune. She has submitted that in any event the Respondent attends the proceedings and / or will have to attend the proceedings filed by her under the Protection of Women from Domestic Violence Act, 2005 at Nasik. She has submitted that even otherwise comparatively it would be more convenient for the Respondent to attend the Divorce Petition at Nasik if the same is transferred as prayed.

7. It is submitted on behalf of the Respondent that the Respondent works at

Pune and it will not be convenient for him to travel all the way to Nasik from Pune and therefore the above Application should not be allowed.

8. I have considered the above submissions advanced on behalf of the Applicant and the Respondent. The submissions made on behalf of the Applicant are not seriously disputed on behalf of the Respondent. From the above submissions made by/on behalf of the Applicant, it is clear that if the Applicant, who is required to look after her two and a half years old child as well as her old and ailing parents, has to undertake a journey of about (420 kms) to and fro involving about 10 to 12 hours to attend to the Divorce proceedings filed by the Respondent husband at Pune, the same will cause grave inconvenience and hardship to the Applicant. As correctly submitted by the Applicant, the maintenance of Rs.2,500/- per month which she receives from the Respondent, is not at all adequate for the sustenance of herself and her child. As against this, the Respondent undertakes / shall be undertaking the journey from Pune to Nasik for the purpose of defending the proceedings filed by the Applicant against him under the Protection of Women from Domestic Violence Act, 2005. Except for the fact that the Respondent works at Pune, there is no other fact pointed out in support of the case of the Respondent that it will be inconvenient for him to attend the hearing in the Marriage Petition at Nasik instead of Pune.

9. In the light of the above, the Misc. Civil Application for transfer is required to be allowed and I therefore pass the following order :

i. The learned Civil Judge, Senior Division, Pune is directed to transmit the

papers and proceedings of Marriage Petition No. 1099 of 2016 to the Family Court at Nasik.

ii. The parties as well as the learned Civil Judge, Senior Division, Pune and the Family Court at Nasik shall act on an authenticated copy of this order.

iii. Both the parties shall appear before the Family Court at Nasik on 18th July, 2017 at 11.00 a.m. and obtain appropriate orders/directions.

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

(S.J.KATHAWALLA,J.)