

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

MISC. CIVIL APPLICATION NO.5 OF 2016

Mr.Girish Arun Shingote

.. Applicant

Mrs.Gauri Girish Shingote

.. Respondent

Mr.Satyavrat Joshi for the applicant

CORAM : K. K. TATED, J.

DATE : DECEMBER 21, 2017

PC.:

1. Heard.

2. The learned counsel for the Applicant submits that as per order passed by this court, they already served the Respondent by private notice and file affidavit of service to that effect. He further submits that this court by order dated 14.7.2017 directed Applicant again to serve the Respondent stating that matter will be decided finally at the stage of admission itself. He submits that that order was also complied by them and filed affidavit of service to that effect. In spite of service, no one appeared on behalf of her when the matter was called out for hearing. Hence, as per order dated 14.7.2017 matter is taken up for final hearing at the stage of admission itself.

3. By this Application under section 24 of the Code of Civil Procedure, 1908 Applicant husband is seeking transfer of Criminal

Misc. Application No.1837 of 2012 filed by Respondent wife before Hon'ble Judicial Magistrate, First Class at Pune under section 12(1)18(a), (b), (e), 19, 19-8, 20, 22 & 23(2) of Protection of Women from Domestic Violence Act, 2005 to Family Court at Pune.

4. The learned counsel for the Applicant submits that the Applicant filed Guardianship Petition No.43 of 2012 in the Family Court at Pune for grant of custody of three minor children under section 25 of the Guardianship and Wards Act, 1890. He further submits that even the respondent wife filed Petition for divorce bearing P.A.No.1160 of 2015 under section 13(1)(ia), s. 24, s.25 and s.26 of the Hindu Marriage Act, 1955 before the Family Court No.5, Pune at Pune. He further submits that all these matters are pending between the parties from the same cause of action. He submits that both the parties are required to lead common evidence. Therefore, in the interest of Justice, this Hon'ble Court be pleased to transfer Criminal Misc Application No.1837 of 2012 filed by respondent wife which is pending before the learned JMFC Court, Pune to the Family Court at Pune. He submits that if present Application is not allowed, irreparable loss will be caused to them.

5. It is to be noted that in the present proceedings, wife also filed Divorce Petition bearing P.A.No. 1160 of 2015 which is pending before the Family Court at Pune. In similar way the petition for grant of custody under section 25 of the Guardianship and Wards Act, 1890 filed by Applicant husband being Guardianship Petition No.43 of 2012 is also pending before the Family Court at Pune. Hence, applicant filed this application for transfer of Application filed by Respondent wife

under Domestic Violence Act, 2005 to the Family Court at Pune. He relies on the judgment of this court (*Coram: R.D.Dhanuka, J.*) dated **10.12.2015 in the matter, Minoti Subhash Anand vs. Subhash Manoharlal Anand in Misc. Civil Application No.255 of 2015.**

6. Considering the above mentioned facts and the law declared by this court in the matter of *Minoti Subhash Anand vs. Subhash Manoharlal Anand* (Supra), I am satisfied that Applicant has made out a case for allowing this Application. Hence, following order is passed:

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

“(A) That this Hon'ble Court be pleased to direct the Ld.JMFC Court No.5, Pune to transfer the Criminal Misc. Application No.1837/2012 pending before it to the Hon'ble Family Court, Pune (Exhibit “A”)

(B) That this Hon'ble Court be pleased to direct the Hon'ble Family Court No.5 before whom PD 43/2012 and P.A.1160/2015 are pending (Annexures “B” and “C”) to club all 3 matters i.e. (Annexures “A”, “B”) and “C” together and try them simultaneously.

b) No order as to costs.

(K.K.TATED, J.)