

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

MISCELLANEOUS CIVIL APPLICATION NO.12 OF 2018

Sou. Ravina Ashish Thorat Nee
Ravina Prakash Shinde
vs.

..Applicant

Shri Ashish Vilas Thorat

...Respondent

Mr.Dilip Bodake for the Applicant.
None for the Respondent.

**CORAM : A. M. DHAVALA, J.
DATE : 28th AUGUST, 2018.**

P.C.:

. The wife has filed this application under section 24 of CPC for transfer of H.M.P. No.139/2017 filed by her husband in the Court at Panvel to the Court at Karad, District Satara as she is residing at Vathar Taluka Karad.

2. Heard learned counsel for the applicant. None present for the Respondent.

3. The brief facts essential for deciding the matter may be stated as follows:

The marriage between the parties took place on 24/4/2014 at Panvel. The couple cohabited at Panvel and after differences the wife is residing with her widowed mother and young brother at Vathar, Taluka Karad. There is no issue out of the wedlock. On 10/4/2017 the husband has filed petition for divorce in the Panvel Court. The wife has filed HMP

No.259/2017 in Karad Court under section 9 for restitution of conjugal rights. The applicant seeks transfer on the ground that Panvel is far away from Karad and she is poor and her petition is pending in the Court at Karad.

4. The husband has opposed the application by reply at Exh.34. He has shown willingness to bear transport charges of the applicant and is also willing to get her HMP No.259/2017 transferred from Karad Court to Panvel Court. He has stated that after the marriage his wife left his house on her own on 4/4/2015 and was in her matrimonial house upto October. Thereafter, there was agreement where she agreed to behave properly and cohabit but, thereafter she again left his house and her relatives has given threat to him of dire consequences if he would go to their area. In the divorce petition he has alleged that she left matrimonial house on the death of his father on 14/11/2016 and thereafter did not return. He has issued her notices however, the said notices were not replied. He has alleged that due to mental cruelty by his wife it has become impossible for him to cohabit with her and therefore he was constrained to file divorce petition .

5. The applicant has not filed any proceedings against her husband either for maintenance or for domestic violence caused or any criminal complaint under section 498A of Cr.P.C. On the contrary, she has executed agreement, a copy of which is produced on record which shows that problem was with her conduct and not with that of her husband and relatives. The applicant has not replied two notices issued by the respondent but she has filed petition under section 9 of CPC for restitution of conjugal rights and claimed therein that she was not allowed to enter matrimonial house on 16/4/2017. This petition is filed about 6 months after filing of the divorce petition. The contention of the respondent that there was threat given to him of dire consequences cannot be ignored.

6. Learned advocate for the applicant also prays for expenses of escort to be provided to the applicant. In case the respondent is ready to bear charges there should be fair charges for stay, dinner and escort.

7. Considering all the facts, I hold that merely because wife is residing far away from the place where divorce petition is filed against her, it cannot be the ground in all cases to grant transfer of the matter. In this regard, I rely on *Shiv Kumari Ojha vs. Ramajor Ojha*¹, wherein it is held that if the respondent(husband) has agreed to bear the expenditure for travel and stay of wife whenever she attends the Court, the matter need not be transferred.

8. I accept the offer of the Respondent to bear actual fare of the applicant from Karad to Panvel and back and also additional expenses of Rs.500/- for bare expenses of stay and lunch. Subject to the above statement, the application is dismissed. However, if the respondent is not abiding the aforesaid terms, the applicant is at liberty to file fresh application.

(A. M. DHAVAL, J.)

¹ AIR 1997 Supreme Court 1036