

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

MISC. CIVIL APPLICATION NO. 28 OF 2017

Mrs.Jhanavi Kiran Jadhav ...Applicant

Versus

Mr. Kiran Vijay Jadhav ...Respondent

.....
Mr. Anilkumar K. Patil for the Applicant.

.....

**CORAM: MRS.MRIDULA BHATKAR, J.
DATED: APRIL 16, 2018**

P.C. :

1. This application is filed under section 24 of the Civil Procedure Code by the applicant/wife for transfer of the Marriage Petition No. 64 of 2011 filed by the respondent/ husband for divorce under section 13 (1) (i-a) of the Hindu Marriage Act, which is pending before the learned Civil Judge, Senior Division, Ratnagiri, to be transferred to the Family Court, Bandra, where the Marriage Petition No. 2005 of 2013 for restitution of conjugal rights filed by the applicant/ wife is pending.

2. It appears that this application was appeared before this Court on 1st February, 2017. At that time, this Court stayed the proceedings of Marriage Petition No. 64 of 2011 pending before

the Civil Judge, Senior Division, Ratnagiri. The Court notice was issued to the respondent, however, the said notice has been returned with remark “respondent not residing given address door is lock”. The affidavit of service is filed showing the service on the respondent.

3. The learned Counsel for the applicant/wife submits that the private notice is issued on the respondent/husband and twice he has filed affidavit of service to that effect. He further submits that the ex-parte decree for divorce was passed by the learned Civil Judge, Senior Division, Ratnagiri vide order dated 27th January, 2012 in favour of the respondent/ husband. After having knowledge of the said ex-parte decree, the applicant/wife filed Regular Civil Appeal No. 124 of 2014 before the learned Principal District Judge, Ratnagiri on the ground that the applicant was never served. The said Appeal was allowed by the judgment and order dated 29th June, 2016. Thereafter, the matter was remanded back to the learned Civil Judge, Senior Division, Ratnagiri. No Second Appeal is preferred by the respondent/ husband. He further submits that the respondent/husband is aware about the proceedings filed by the applicant/wife before this Court. However,

he is avoiding to appear before this Court. The applicant/wife is residing at Borivali and she is working in insurance industry. She is looking after minor son of 10 years old of the couple. He further submits that the applicant/wife has also filed the Marriage Petition No. 2005 of 2013 for restitution of conjugal rights under section 9 of the Hindu Marriage Act in the 4th Family Court, Bandra and, therefore, there is a possibility of conflicting judgments by two different Courts. Hence, he prays that the Marriage Petition No. 64 of 2011 filed by the respondent/ husband in the Court of Civil Judge, Senior Division, Ratnagiri be transferred to the Family Court, Bandra.

4. Heard submissions. The respondent/ husband is fully aware of the stay granted by this Court and thus, naturally aware about the proceedings before this Court. There is no need to give public notice, as it is a matrimonial matter and the privacy of the parties may be affected. Thus, the order of stay passed by this Court year back in this application is to be taken into account. The respondent is also served by private notice. Hence, I am of the view that the respondent/husband is avoiding to appear before this Court inspite of good service. Considering the reasons mentioned

by the learned Counsel for the applicant/wife that there is a child of 10 years old, who is staying with the applicant/wife and also considering the welfare of the child and convenience of the applicant/wife, I pass the following order.

ORDER

i) Marriage Petition No. 64 of 2011 pending before the learned Civil Judge, Senior Division, Ratnagiri, is hereby transferred to the 4th Family Court, Bandra, where the Marriage Petition No. 2005 of 2013 for restitution of conjugal rights filed by the applicant/wife is pending.

ii) The Nazir/ Superintendent of the Civil Judge, Senior Division, Ratnagiri is directed to transfer the Marriage Petition No. 64 of 2011 to the 4th Family Court, Bandra, on or before 4th May, 2018.

iii) Marriage Petition No. 64 of 2011 is to be clubbed with Marriage Petition No. 2005 of 2013.

iv) The parties to appear before the 4th Family Court, Bandra on 5th May, 2018 at 11.00 a.m.

5. Miscellaneous Civil Application is disposed of on the above terms.

(MRIDULA BHATKAR, J.)