

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO. 216 OF 2017

Sau. Deepa Kiran Shetty	..	Applicant
vs.		
Shri Kiran Kumar Shetty	..	Respondent

WITH
MISC. CIVIL APPLICATION NO. 318 OF 2017

Shri Kiran Kumar Shetty	..	Applicant
vs.		
Sau. Deepa Kiran Shetty	..	Respondent

Mr. G. Jadhav i/b. Mr. Devidas Jadhav for Applicant in MCA 216 of 2017 and for Respondent in MCA 318 of 2017.

Mr. R. A. More for Applicant in MCA 318 of 2017 and for Respondent in MCA 216 of 2017.

CORAM : M. S. SONAK, J.
DATE: 23 FEBRUARY 2018

P.C :

1] These two miscellaneous civil applications can be disposed of by a common order.

2] Vide MCA 216 of 2017 the wife Deepa, seeks a transfer of Hindu Marriage Petition No. 748 of 2015 for divorce pending on the file of Civil Judge, Senior Division at Pune to the Senior Judge, Senior Division at Baramati. On the other hand, vide MCA 318 of 2016 husband Kiran, seeks transfer of Hindu Marriage Petition No. 3 of 2016 for restitution of conjugal rights on the file of Civil Judge, Senior Division at Baramati to the Family Court at Pune. In fact, Kiran, seeks a transfer of his own petition i.e. Hindu Marriage Petition No. 748 of 2015 from the file of the Civil Judge, Senior Division to the Family Court at Pune.

3] Mr. Jadhav, the learned counsel for the wife points out that the wife is a teacher at Baramati and has to take care of the minor son Kaustubh. He points out that parents of the wife are not living and there is really no person to take care of Kaustubh. He points out that though the distance between the Baramati and Pune is about 110 Kms., by public transport, it takes almost 2 to 3 hours to reach at Pune. He points out that the wife has to take leave from the school which is quite difficult and occasions prejudice not only to the wife but also to the school children. He submits that in a matter of this nature, the convenience of the wife and the minor child has to be taken into consideration.

4] Mr. More, learned counsel for the husband points out that if both the matters are transferred to the Family Court at Pune, there is possibility that they will be expeditiously disposed of. He submits that the directions can also be issued to the Family Court at Pune to dispose of both the matters within a period of one year or even earlier. He submits that he will pay for the transport expenses of the wife. He submits that the husband, volunteers to pay interim maintenance of Rs.2,000/- per month to Kaustubh. He submits that it will be in the interest of both the parties if the matters are transferred to the Family Court.

5] The parties were requested to remain present in the court in order to explore the possibility of settlement. This was because the learned counsel for the wife, on the basis of instructions from the wife, had made a statement that the wife is willing to resume cohabitation with the husband. However, it appears, that no settlement is at least presently possible.

6] In this case, upon due consideration of the rival contentions as also circumstances presented from the record, the interests of justice and the betterment is that the proceedings in the Pune Court are transferred to Baramati Court. The husband, is stated to be working in the garage owned by his brother-in-law. On the other hand, the wife is a teacher, who has to take care of Kaustubh in addition to her own duties. There will be greater difficulties to the wife to obtain leave from the school as compared to the difficulties, if any, faced by the husband who is stated to be working in his own brother-in-law's garage. If, the wife, has to mis-work for a long duration and on several occasions, there will be an impact on her students as well. Then again, there is issue of Kaustubh's school because in all probabilities, the wife will have to take Kaustubh along with her to Pune to attend the case. On account of the pressure of works, there are never any guarantees that the cases will be taken up on the date on which they are fixed. This means that the wife and Kaustubh's visit to Pune made as well turn out to be futile on some occasions at least. Taking into consideration the wife's employment and the circumstance that Kaustubh stays with her, it is only appropriate that the proceedings initiated by the husband are transferred to Baramati rather than the other way round.

7] No doubt, it is possible that the proceedings before the Family Court might be disposed of more expeditiously than the proceedings before the Civil Court. However, Mr. Jadhav points out that the pressure on the Courts in Baramati is not as much pressure on the Courts in Pune. He submits that in fact, the proceedings can be disposed of more expeditiously in the Civil Court at Baramati than the Family Court at Pune.

8] Taking into consideration the aforesaid circumstances, MCA 318 of 2017 instituted by the husband is liable to be dismissed and is hereby dismissed. However, CA 216 of 2017 instituted by the wife is hereby allowed and the proceedings in Hindu Marriage Petition No. 748 of 2015 pending on the file of the Civil Judge, Senior Division Pune are hereby transferred to the file of the Civil Judge, Senior Division at Baramati. This petition be taken up along with Hindu Marriage Petition No. 3 of 2016 instituted by the wife seeking for restitution of conjugal rights. The two MCAs are disposed of in the aforesaid terms.

9] The offer by Kiran, husband to pay interim maintenance of Rs.2,000/- per month to son Kaustubh is appreciated. However, no orders are made in this regard, since the learned counsel for the wife states that application for maintenance will be filed in the Court of Civil Judge, Senior Division at Baramati. If such an application is filed, the same is to be considered by the Civil Court on its own merits and in accordance with law.

10] All concerned to take necessary steps to effect the transfer as expeditiously as possible and in any case within a period of four weeks from today.

11] The parties to appear before the Civil Judge, Senior Division at Baramati on 2nd April 2018 since, by the said date, it is expected that the proceedings from Pune will stand transferred to Baramati.

(M. S. SONAK, J.)