

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

MISCELLANEOUS CIVIL APPLICATION NO.136 OF 2018

Smt. Sonali Santosh Khandge

..Applicant

vs.

Shri Santosh Shivaji Khandge

...Respondent

Mr.Ashok B. Tajane for the Applicant.

Mr.Surel S. Shah for the Respondent No.2.

CORAM : A. M. DHAVALA, J.

DATE : 17th SEPTEMBER, 2018.

P.C.:

. The applicant married to the opponent at Mulund on 21/2/2015. She begot one daughter on 28/3/2017. Since 28/6/2017, the parties are separated. According to the applicant she was driven out of her matrimonial house. Divorce Petition was filed by the opponent on 22/9/2017 at Khed (Rajgurunagar), Pune.

2. The applicant seeks transfer of divorce petition to the Family Court, Bandra on the grounds that she is working at Mumbai and has to maintain her young daughter. As per section 19 of Hindu Marriage Act, divorce petition can be filed at a place where the marriage was solemnized or at a place where at the time of presentation of the petition, the parties last resided together. Section 3(a) permits only the wife to file petition for divorce at the place of her own residence. The divorce petition shows no ground why divorce petition was filed at Khed when the parties were resident of Mumbai.

3. It is well known fact that when the matrimonial relations

become bitter filing of proceedings at a place not convenient to the other side is used as a weapon. It is found that this petition was mechanically admitted by the Assistant Superintendent without looking into the issue whether the Court has territorial jurisdiction besides the issues of valuation Court fee and limitation. The learned Presiding Officer also did not pay any attention to the territorial jurisdiction of the Court. The parties lastly resided in Mumbai, marriage took place in Mumbai and Respondent wife is residing in Mumbai. The Court at Khed (Rajgurunagar) had no jurisdiction. This casual attitude of the Assistant Superintendent invested with duty of checking the civil matters at the time of institution of the petition and lack of proper attention by the Presiding Officer had led the Respondent to file this petition.

4. As per section 24(5) this Court has jurisdiction to transfer the matter from the Court which has no jurisdiction to try. Considering the facts, the following order:

ORDER

- i) The Divorce Petition No.327/2017 is transferred from the Court of Khed to the Family Court at Bandra. The parties are directed to remain present in the Court on 3/10/2018.
- ii) The Superintendent and the learned Civil Judge shall see that the matter reaches the Family Court, Bandra in time. Intimation to him be given by e-mail.
- iii) The application is thus allowed and is accordingly disposed of.

(A. M. DHAVAL, J.)