

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

MISC. CIVIL APPLICATION NO. 286 OF 2017

Rohini Avinash Mogal	...	Applicant
V/s.		
Avinash Madhukar Mogal	...	Respondent

- Mr.Vaibhav Ugle i/b. Mr.Sumant Deshpande for the Applicant.
- Mr.Pritesh K. Bohade for the Respondent.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 8th AUGUST, 2018.

P.C. :

1] Heard learned counsel for the Appellant and the Respondent.

2] This application is filed under Section 24 of the Civil Procedure Code, 1908, for transferring Petition bearing No.A-1163 of 2017 filed by the Respondent in the Family Court at Bandra, Mumbai to the Court of Civil Judge, Senior Division at Nashik.

3] The Applicant is the wife of the Respondent. She has already filed Marriage Petition No.98 of 2017 against the Respondent for '*Restitution of conjugal Rights*' under Section 9 of the Hindu Marriage Act, 1955. Thereafter, the Respondent has filed this Petition

bearing No.A-1163 of 2017 for '*divorce*' against her in the Family Court at Bandra, Mumbai. Needless to state that, both these petitions are required to be decided together by one Court in order to avoid conflicting decisions.

4] The Petition filed by the Applicant for '*Restitution of conjugal Rights*' in the Court of Civil Judge, Senior Division, Nashik is prior to the Petition filed by the Respondent for '*divorce*' in the Family Court, Bandra, Mumbai. Therefore, the Petition filed by the Respondent for divorce is required to be transferred to the Court of Civil Judge, Senior Division, Nashik, where the Petition for '*Restitution of conjugal Rights*' is pending.

5] The only contention raised by learned counsel for the Respondent is that the Applicant is a well educated lady, who is serving in H.D.F.C. Bank and she is not having the responsibility of any child or otherwise; she can very well travel to Bandra, considering that there is good connectivity by train, bus and other transport vehicles and also considering the distance between Nashik and Bandra, which is hardly of 100 to 150 k.m. Further it is submitted that, as per the order passed by this Court on 4th April, 2018, there was clear direction that, if she is going to attend the Family Court, Bandra, the Respondent shall pay to her the transport charges and

other expenses totally to Rs.1,000/- every visit, so that it will enable her to travel along with some companion.

6] It is submitted that the Applicant has, however, not attended single date in the Family Court, Bandra and as a result, the said Petition is kept for '*ex-parte hearing*'. In view thereof, it is submitted that, no purpose is likely to be served by transferring the said Petition to the Court at Nashik.

7] However, in my considered opinion, the order passed by this Court on 4th April, 2018 is clearly stating that, if the Applicant attends the Family Court, Bandra, she will be entitled to get the travelling expenses. There was no clear direction to the Applicant to attend the Family Court, Bandra. Secondly, it is purely on account of her inability to attend the Court at Bandra, she could not attend the said. Hence, the order of *ex-parte* came to be passed against her. That order can be set-aside by the trial Court; especially considering that the Petition filed by the Applicant for '*Restitution of conjugal Rights*' is also pending in the Court of Civil Judge, Senior Division, Nashik. The interest of justice always require that the Applicant should be in a position to prosecute her remedy effectively and at-least no matrimonial proceedings should be decided *ex-parte*, as thereby the chances of amicable resolution of dispute between the parties are

taken away.

8] Here, in the case, considering that the Petition for '*Restitution of conjugal Rights*' is filed by the Applicant prior to the Petition for 'Divorce' filed by the Respondent, in order to avoid the conflicting decisions, it is necessary to transfer the Petition for 'Divorce' filed by the Respondent in the Family Court, Bandra to the Court of Civil Judge, Senior Division, Nashik.

9] The Misc. Civil Application is accordingly allowed and following order is passed.

- (a) *Petition No.A-1163 of 2017 pending on the file of Family Court, Bandra, is transferred to the Court of Civil Judge, Senior Division, Nashik, where Marriage Petition No.98 of 2017 filed by the Applicant for 'Restitution of conjugal Rights' under Section 9 of the Hindu Marriage Act is pending.*
- (b) *Family Court, Bandra to transfer the 'Record and Proceedings' of Petition No.A-1163 of 2017 to the Court of Civil Judge, Senior Division, Nashik, forthwith.*
- (c) *Registry to inform the concerned Courts accordingly.*

[DR.SHALINI PHANSALKAR-JOSHI, J.]