

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISCELLANEOUS CIVIL APPLICATION No. 333 OF 2017

Mrs. Sangeeta Rajendra Rathi ... Applicant
Vs.
Rajendra Radhakisan Rathi & Anr. ... Respondents

Mr. Mohit P. Bhansali a/w. Karan Gautam Jain, Advocate for the applicant.
Mr. S.S. Joshi i/b. Kunal Ambulkar, Advocate for the respondents.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **13th April, 2018.**

P.C.:

The name of respondent no. 2-Shantadevi Radhakisan Rathi/mother-in-law is deleted from the array of respondents, as she is not party to the Marriage Petition No. A-77 of 2017 filed under section 9 of the Hindu Marriage Act.

2. The learned counsel for the respondent/husband filed reply, which is taken on record.

3. This Application is moved under section 24 of the Code of Civil Procedure by the applicant/wife praying that the Marriage Petition No. A-77 of 2017 filed the respondent/husband under section 9 of the Hindu Marriage Act, which is pending in the Family Court, Akola be

transferred to Family Court at Thane.

4. The learned counsel for the applicant/wife submitted that the applicant and respondent got married on 29th November, 1985 at Akola. They have three major children out of this wedlock. However, due to the instances of adultery and cruelty, the applicant had to suffer mentally and physically, so she was compelled to leave the respondent/husband and went to her maiden home at Thane. She is staying with her mother and brother. The applicant filed Petition No. PWDVA 19 of 2017 under Domestic Violence Act, which is pending before the Court of Chief Judicial Magistrate, Thane. The learned counsel submitted that the applicant, being a lady, is not possible for her to travel from Thane to Akola and attend the Court dates, as the distance from Thane to Akola is more than 500 kms. The learned counsel further submitted that the respondent/husband is attending the Court dates in the Domestic Violence proceedings at Thane. Thus, if at all Marriage Petition No. A-77 of 2017 is transferred to Thane, the respondent can attend the same matter also.

5. The learned counsel for the respondent/husband, while opposing this Application, has submitted that this Application does

not make out a case under section 24 of Code of Civil Procedure. He referred to the contents in the Petition filed for restitution of conjugal rights. He refuted the allegations made by the applicant/wife on cruelty in her Petition under Domestic Violence Act. He has further submitted that the applicant is a Dentist and an educated woman and no special inconvenience is made out by her. He further submitted that the respondent is staying at Akola. He is looking after the business and has to take care of his old mother who is 75 years old, therefore, it will be inconvenient for him to travel to Thane and attend the matter at Family Court. The learned counsel submitted that both the parties have in fact moved an application stating possibility of settlement. He further that this Application is to be rejected.

6. Heard the submissions. Perused the papers as pointed out by the learned counsel for both the sides. The applicant is 54 years old and the respondent is 58 years old. They have spent nearly 30 years of life together and have 3 major children. Unfortunately, due to certain reasons and allegations made against each other by both the parties in their respective petitions, the Applicant is staying in her maiden home.

7. The applicant has filed the proceedings under Domestic Violence Act, which is pending before Chief Judicial Magistrate, Thane. The respondent/husband is attending the said proceedings. The applicant has not attended the proceedings which is filed under section 9 of Hindu Marriage Act at Akola. In such case, either of the party is bound to suffer inconvenience. However, that inconvenience is to be weighed. The respondent is attending the matter filed under Domestic Violence Act before Chief Judicial Magistrate, Thane, however, if the said case is transferred to Family Court, Thane and the Marriage Petition filed by the respondent at Akola is also transferred to Family Court, Thane, then both the matters can be clubbed together and one date can be given for both the matters. Thus, the parties will have to attend only one Court for both the proceedings and this will minimize the inconvenience to certain degree.

8. Considering the prevailing circumstances and facts of the case, I hold that the cause is made out to allow this Application. Hence, I pass following order:

- (i) Marriage Petition No. A-77 of 2017 filed by the respondent/husband at Family Court, Akola is

transferred to Family Court, Thane;

- (ii) The Superintendent of Family Court, Akola to transfer Marriage Petition No. A-77 of 2017 to Family Court at Thane on or before 2nd May, 2018 without fail.
- (iii) Petition No. PWDVA/19 of 2017 filed by the applicant/wife under Domestic Violence Act before the Chief Judicial Magistrate, Thane is transferred to Family Court, Thane. The papers are to be sent to Family Court, Thane on or before 2nd May, 2018;
- (iv) Both the parties to appear before the Principal Judge or District Judge of Family Court at Thane, where both the matters are assigned, on 2nd May, 2018 at 11.00 a.m.
- (v) Considering the history of married life of both the parties and their age, I have no doubt that the Family Court will endeavour to explore the possibility of settlement.

9. Miscellaneous Civil Application is allowed and is disposed of accordingly.

(MRIDULA BHATKAR, J.)