

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISCELLANEOUS CIVIL APPLICATION NO. 349 OF 2017

Mrs. Dynaneshwari Milind Padwal	... Applicant
Vs.	
Milind Vasant Padwal	... Respondent

Ms. Tejas Kapre i/b. Jayprakash S. Kapre, Advocate for the applicant.
Mr. Kiran Arjun Nikam, Advocate for the respondent.

CORAM: MRS.MRIDULA BHATKAR, J.
DATE: 27th April, 2018.

P.C.

This Application is filed by the applicant/wife under section 24 of the Code of Civil Procedure for transfer of Hindu Marriage Petition No. 274 of 2017 filed by the respondent/husband for divorce before Court of Civil Judge Senior Division, Thane to the Court of Civil Judge Senior Division at Pune.

2. The learned counsel for the applicant/wife has submitted that the applicant has filed the Petition No. 1214 of 2016 for restitution of conjugal rights under section 9 of Hindu Marriage Act before the Civil Judge Senior Division, Pune. The learned counsel submitted that as a counter blast, the respondent/husband has filed Marriage Petition No. 274 of 2017 for divorce in the Court of Civil Judge Senior

Division, Thane. She submitted that the applicant is not much educated. She is unable to travel alone from Pune to Thane Court. The applicant is not earning and totally dependent on her father and mother, with whom at present she is staying.

3. The learned counsel for the respondent/husband submitted that both the parties in fact are ready for dissolution of marriage, however, the applicant/wife has made a demand of Rs.1.5 lakhs and earlier she has made demand for Rs.10 lakhs for permanent settlement. He submitted that the husband is not in a position to give so much amount, as he is unemployed and dependent on his father's income. The learned counsel has further submitted that it is not convenient for the respondent/husband to travel from Thane to Pune. He is already paying Rs.3,000/- to wife towards maintenance. In support of his submissions, the learned counsel relied on the judgment of the Hon'ble Supreme Court in the case of **Gargi Konar vs. Jagjeet Singh, reported in (2005) 11 SCC 446.**

4. Considered the submissions. If the parties want to settle the matter, then they can proceed with the talks before the Civil Judge Senior Division, Pune.

5. The learned counsel for the applicant/wife submitted that no such talks of settlement have taken place between the parties.

6. In the case of **Gargi Konar** (*supra*), the wife has sought transfer of Petition from Bhatinda (Punjab) to Burdwan or Durgapur (West Bengal) on the ground that she is a helpless woman dependent upon her father. The Hon'ble Supreme Court held that “this is not a good ground for transfer of Petition. The respondent can be directed to pay for her and her companions, to and fro and stay expenses on every occasion on which she is required to travel”.

7. In the present case, though some submissions are made, one more ground for transfer is made out, i.e., applicant/wife has filed the Petition for restitution of conjugal rights in the year 2016 in the Court of Civil Judge Senior Division, Pune, which is first in time and no conflicting orders can be passed by the two Courts entertaining the Petition for restitution of conjugal rights and other dealing with Divorce Petition.

8. Under such circumstances, Hindu Marriage Petition No. 274 of 2017 filed by the respondent/husband for divorce before the Court of

Civil Judge Senior Division, Thane is transferred to the Court of Civil Judge Senior Division at Pune.

9. The learned counsel for the applicant submitted that the Petition No. 1214 of 2016 for restitution of conjugal rights is scheduled in the 2nd week of June, 2018. Therefore, the Superintendent/Nazir of the Court of Civil Judge Senior Division, Thane is hereby directed to send all the record and proceedings of Marriage Petition No. No. 274 of 2017 to the Court of Civil Judge Senior Division at Pune where the Petition for Restitution of conjugal rights is pending, on or before 22nd May, 2018.

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

(MRIDULA BHATKAR, J.)