

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION No. 89 OF 2019

Mrs. Pooja Sandeep Dulgaj @	
Miss. Pooja Ranveer Sarsar	...Applicant
Vs.	
Mr. Sandeep Ramkishan Dulgaj	...Respondent

Mr. Rajesh A. More for the Applicant
Ms. Minal Jaiwant Chandanani for Repsondent

CORAM: K.K. TATED, J.

DATED : JUNE 26, 2019

P.C. :

1. Heard learned counsel for the parties.
2. By this application under Section 24 of the Civil Procedure Code, 1908, the Applicant wife is seeking transfer of Hindu Marriage Petition No. 321/2017 filed by the Respondent Husband under Section 13 (1) (i-a) (i-b) of the Hindu Marriage Act, 1955 for divorce in the Court of Civil Judge, Senior Division, Pune at Pune to Family Court at Thane.
3. Learned counsel for the applicant submits that since 2012, the Applicant is staying separately. He submits that she filed case under the Protection of Women from Domestic Violence Act, 2005 bearing C.C. No. 45/DV/2013 in the Court of Learned Metropolitan Magistrate, 53rd Court at Mulund, Mumbai. He submits that in that proceedings, the learned Metropolitan Magistrate directed the Respondent to pay maintenance at the rate of Rs.3,500/- p.m. He submits that in spite of the said order, the Respondent failed and neglected to pay the maintenance charges. Hence, the Applicant

constrained to file execution application. He submits that the trial court in the execution application, issued arrest warrant for recovery of the said sum of Rs.1,55,000/- towards arrears of maintenance charges.

4. Learned counsel for the Applicant submits that the Applicant is a household wife. She don't have any source of income. He submits that at present the Applicant is residing at Thane. He submits that her brothers and father are bearing rental expenses of her flat at Thane. He submits that the Applicant is having a son, who is six years' old and he is taking education in Thane. He submits that it is difficult for the Applicant to attend each and every date at Pune along with six years' old child. He submits that in any case, the Respondent is attending the matter before the Mulund Court at Mumbai. Hence, in the interest of justice, the petition filed by the respondent under Section 13 (1) (i-a) (i-b) of the Hindu Marriage Act at Pune be transferred to the Family Court at Thane for hearing and final disposal on its own merits. He submits that if the application is not allowed, irreparable loss would be caused to the Applicant.

5. On the other hand learned counsel Ms. Minal Chandanani for the Respondent vehemently opposed the present application. She submits that the Respondent is getting only Rs.8,000/- per month. She submits that out of the said Rs.8,000/-, the Respondent is paying Rs.3,500/- by way of maintenance to the Applicant. She submits that it is very difficult for the Respondent to attend the matter at Thane, if the petition is transferred to that Court. She submits that distance between Thane to Pune is not more than 150 kilometers. She submits that the Applicant can conveniently travel from Thane to Pune. She submits that there is no substance in the

applicant and the same is required to be dismissed with costs.

6. I heard both the counsels at length. It is to be noted that in the present proceedings, in the year 2013, the Applicant wife filed application under The Protection of Women from Domestic Violence Act, 2005. In that application, after hearing both the sides, the Learned Magistrate directed the Respondent to pay Rs.3,500/- by way of maintenance charges. It seems that the Respondent failed and neglected to pay the maintenance charges irregularly. Hence the Applicant constrained to file application for issuing warrant.

7. In any case, the Applicant is a household wife and she has to look after her minor child, who is 6 years' old. It is difficult for the mother to travel along with her minor child whole day to attend the matter to other station. Considering these facts, I am of the opinion that the Applicant has made out a case for allowing this application.

8. Hence, following order:

(a) Marriage Petition No. 321/2017 filed by the Respondent husband under Section 13(1) (i-a) (i-b) of the Hindu Marriage Act, 1955 in the Court of Civil Judge, Senior Division, Pune at Pune is transferred to the Family Court at Thane for hearing and final disposal on its own merits.

(b) Civil Application stands disposed of accordingly.

(c) Parties to act on an authenticated copy of this order.

(K. K. TATED, J.)