

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISC.CIVIL APPLICATION NO.63/2019

Parna C. Shah Applicant.
Vs.
Charwak S. Shah ... Respondent.

Advocate Mr. Abhijit D. Sarwate with Ajinkya Udane for applicant.

Advocate Mr. Darman J. Dalal for respondent.

CORAM : K.K.TATED, J.
DATED : JULY 3, 2019.

P.C.

Heard learned counsel for parties.

2. By this application u/s 24 of CPC, applicant/wife is seeking transfer of M.J.Petition No.A-1308/2018, filed by respondent/husband u/s 13(1)(ia) of Hindu Marriage Act for divorce before Family Court at Bandra, Mumbai to Family Court at Pune.

3. Learned counsel for applicant submits that, in the present proceeding the applicant/wife filed M.J.Petition No.A-1308/2017 u/s 9 of Hindu Marriage Act 1955 for

restitution of conjugal rights, before Family Court at Pune on 7.11.2017. He submits that in that petition, the respondent/husband is duly served. Thereafter, respondent filed his written statement dated 16.2.2018. He submits that the respondent is attending Pune Court to defend the same.

4 Learned counsel for applicant submits that the respondent, thereafter filed Petition bearing M.J.Petition No.A-1308/2018 in the family court at Bandra, Mumbai for divorce on 28.4.2018. He submits that instead of filing counter claim, in petition filed by applicant at Pune, respondent intentionally filed separate petition at Mumbai to harass the applicant. He submit that in any case, applicant being a lady, it is difficult for her to travel from Pune to Mumbai to attend matter on each and every date. For attending the matter at Mumbai, applicant has to leave Pune in the morning at 5.30 am. In any case, as per Section 10 of CPC, petition filed by respondent, subsequently required to be stayed. In support of his contention he relies on the judgment of Higg Court in the matter of K.V.Uma Meheswararao Vs. Gandam Sujatha reported in, 1995 SCC Online AP 544. On the basis of this submission learned counsel for applicant submits that in the interest of justice,

this court be pleased to transfer the petition filed by respondent at Family Court Mumbai to Family Court at Pune and direct the Court at Pune to hear both the petitions together.

5 On the other hand, learned counsel appearing on behalf of the respondent/husband, vehemently opposed the application. He submits that applicants have to look after her daughter who is minor. Her age is 6 years. She is taking education. He submits that if petition filed by respondent/husband at Family Court Mumbai, is transferred to Pune, then it will be very difficult for the respondent to take care of her daughter and attend the matter on each and every date. All witness in his petition are at Mumbai only. He submits that if matter is transferred from Mumbai to Pune then, he has to take all witnesses to Pune and that will be very difficult for him. He submits that in the interest of justice, this court be pleased to dismissed the present petition. He submits that he received instructions from his client that, he is ready and willing to bear all the expenses of applicant for attending the matter at Mumbai including travelling, stay etc. On the basis of this submission, learned counsel for respondent submit that there is no substance in the application and

same is required to be dismissed with costs.

6 It is to be noted that in the present proceeding applicant filed petition u/s 9 of the Hindu Marriage Act on 7.11.2017. In that petition, respondent filed his written statement on 16.2.2018. Thereafter, respondent on 20.4.2018 filed M.J.petition no.A-1308/2018 for divorce before Family Court at Bandra,Mumbai. This itself shows that the petition filed by respondent is subsequent to the petition filed by wife u/s 9 of the said Act. In any case, in such type of cases, we have to see the convenience of wife It is specifically stated in the petition that to reach Mumbai, applicant has to leave Pune at 5.30 a.m. that, she can attend the matter at Bandra, Mumbai.

7 Considering overall facts and circumstance, I am of the opinion that applicant has made out the case for allowing the application .

8 Hence, the following order.

A) Misc.Civil application is allowed in terms of prayer clause (a) and (b) which reads thus,

a)Proceeding bearing P.A.No.1308/2018 pending before the Hon'ble Family Court, Bandra, (Court

No.3) be transferred to Family Court No.3, Pune.

b) Proceeding bearing P.A.No.1308/2018 be clubbed with P.A.No.1308/2017 pending before the Hon'ble Family Court no.3, Pune.

c) No order as to cost.

(K.K.TATED, J.)

