

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

**MISC. CIVIL APPLICATION NO. 135 OF 2018**

Leena Lincen Thommana

..... Applicant.

Vs.

Lincen Louis Thommana

..... Respondent.

Nitesh S. Nevshe for the Applicant.  
Surya Deokar for the Respondent.

.....

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**CORAM : K.K.TATED, J.**  
**DATED : AUGUST 2, 2019**

**P.C.**

1. Heard Learned Counsel for the parties.
2. By this Misc. Civil Application, under Section 24 of the Civil Procedure Code, the Applicant wife is seeking transfer of Hindu Marriage Petition No. 22/2017 filed by the Respondent husband under Section 18 of the Divorce Act, 1869 for decree of nullity from the Civil Judge, Senior Division, Kalyan to the District Court at Pune.
3. The Learned Counsel for the Applicant submits that, the Applicant wife is staying at Pune. Hence, she has filed the present application for transfer of petition from Kalyan to Court at Pune. He submits that the distance between Pune to Kalyan is more than 200 Km. It is very difficult for her to travel on each and

every date. In support of this contention, the Learned Counsel for the Applicant relies on para 5 of the application which reads thus.

*“5. The Applicant states that the Respondent has filed the case at Hon'ble District Judge, Kalyan, at Kalyan, whereas, the Applicant is residing at Pimpri Pune, and therefore, it is impossible for her to travel to Kalyan from Pune all alone as she is suffering from motion sickness problem and doctor has strictly prohibited her from travelling and taking any stress and it is not possible for her to even incur the expenses for travel. The Applicant further submits that as the Applicant is temporary service in private College and therefore, it is not possible for her to travel to Kalyan which is about 200 kms. from Pune and thus, it is practically impossible for the Applicant to travel all alone and thus, it is not possible for the Applicant to attend the proceedings before the Hon'ble District Judge, Kalyan, at Kalyan. Hereto annexed and marked as EXHIBIT “C” is a copy of medical paper of the Applicant.”*

4. The Learned Counsel for the Applicant submits that, the Criminal Case No. 385 of 2017 filed by the Applicant under the Protection of Women from Domestic Violence Act, 2005 is pending before the Learned J.M.F.C., Pimpri, Pune. He submits that against the interim order of the maintenance, the Respondent husband filed the Criminal Appeal No. 292 of 2018 before the Learned Sessions Court at Pune. The same is pending for hearing and final disposal on its own merits. He submits that in any case the Respondent husband is attending the matter at Pune. He has already appointed an advocate at Pune to defend both the matters. Therefore, in the interest of justice, this Hon'ble Court be pleased to

transfer the Divorce Petition filed by the Respondent husband at Kalyan to the Court at Pune. The Learned Counsel for the Applicant submits that the Marriage Petition filed by the Respondent husband at Kalyan Court to be decided as early as possible within time bound period.

5. On the other hand, the Learned Counsel for the Respondent husband vehemently opposed the present application. She submits that, the distance between Kalyan to Pune is not more than two hours journey. Apart from that the Applicant was working as a Senior Lecturer in Dr. D. Y. Patil college of Nursing, Pimpri, Pune.

6. These facts are denied by the advocate for the Applicant. He submits that, she was working as a Clinical Instructor in Dr. D. Y. Patil college of Nursing, Pimpri, Pune.

7. The Learned Counsel for the Respondent husband submits that as and when the Respondent attended the matter at Pune, the Applicant and her family member abused the Respondent. Hence, the same was constrained the Respondent to file an application before the Learned J.M.F.C., at Pimpri, Pune on 21<sup>st</sup> August, 2018 for the following reliefs:

*“1. Contempt of court notice may kindly be issued against the Applicant and her mother.*

2. *Strict action be taken against the Applicant and her mother for insulting, abusing and attempting to assault undersigned advocate.*
3. *PI of Pimpri Police Station be directed to register an offence against the Applicant and mother.*
4. *Necessary order be passed against the Applicant and her mother.”*

She further submits that, the Respondent husband also filed the complaint with the Police Station at Pimpri. She submits that all these facts are stated by the Applicant in their grounds are as under:

*“a. At the foremost, it is submitted that there is a reasonable apprehension in the mind of the Respondent/husband that he might not get justice at the Ld. District Court, Pune where Respondent and her family resides. It is relevant to mention herein that the allegations against the Applicant/wife are very serious as the Applicant/wife are very serious as the Applicant/wife has obstructed the ongoing proceedings in a domestic violence case at Pimpri. It is submitted that the Applicant/wife intimidated the Respondent and his Advocate by using abusive and filthy words and became physically violent towards the Respondent when the said proceedings was going on. Nevertheless, the Applicant/wife has threatened the Respondent/husband and his family on numerous occasions by stating abusive words and intimidating actions. The Respondent/husband and his advocate lodged a complaint with Police Station, Pimpri for the above said conduct of the Applicant. Copy of the Complaints are annexed herewith and marked as Annexure A-1.*

*b. It is submitted that the Respondent is only son of his old and ailing parents, who are living with him. The parents of the Respondent need regular medical check-ups and constant care. Therefore, the Petitioner's absence from Kalyan would cause inconvenience to his family.*

c. *It is submitted that the Respondent is also suffering from Acute Recurrent Bronchitis. Thus, he needed regular medical check-ups and constant care. Copy of medical certificate is annexed herewith and marked as Annexure A-2.*

d. *It is submitted that the Applicant/wife allegedly filed a domestic violence case at Pimpri against the Respondent/husband on the frivolous grounds instantly after the marriage petition was filed by the Respondent. It is also pertinent to note that the Applicant sent an alleged Notice to the Respondent stating that “you to resume cohabitation with her within 3 days from the receipt of this Notice thereof by giving the undertaking of responsible attitude towards my client failing which my client shall take appropriate legal action”. Copy of Notice is annexed herewith and marked as Annexure A-3.*

e. *It is submitted that the Applicant is working lady and presently she is working as Senior Lecturer in the College of nursing namely Dr. D. Y. Patil College of Nursing at Pune. There is also no connectivity problem between Pune to Kalyan. Thus, there will be no difficulty for the Applicant to travel for attending the relevant proceedings in Marriage Petition at Kalyan. Copy of Salary Certificate is annexed herewith and marked as Annexure A-4.”*

8. The Learned Counsel for the Respondent further submits that, the Respondent in his affidavit dated 21<sup>st</sup> June, 2019 described the facts on which the Respondent is opposing the present application i.e. threat from the Applicant and her family members. She relies on para 5 of her affidavit in reply which reads thus:

*“5. That the Applicant and her family live in Pimpri. The Applicant and her family member intermittently threatened the deponent during his visit in Pimpri/Pune to attend the*

*proceedings. The deponent was not only threatened but also obstructed inside as well as outside the court premise by the Applicant and her family member on attending the court proceedings. On 05/06/2018 the matter of Domestic Violence Complaint was listed before Ld. J.M.F.C Court Pimpri. That in the morning hearing the deponent appeared before the Ld. J.M.F.C Court Pimpri, the Ld. J.M.F.C Court Pimpri, directed to make the compliance to file the certified copy of order dated 03/12/2018 passed by Ld. Sessions Judge, Pune, in Cri. Appeal No. 292 of 2018 and kept the matter for afternoon session. The Applicant had complete knowledge that the deponent and his Advocate had to travel to Pune Shivajinagar District and Sessions Court to get the certified copies of the said order. However, Applicant and her mother Alice Mohan tried to obstruct the deponent and his Advocate inside as well as outside the court premise and abused them with vulgar language as well as assaulted and provoked breach of peace. Applicant made all her efforts to purposefully obstruct the deponent and obstructed him to show his presence before the Ld. J.M.F.C Court Pimpri and hence caused delay to the deponent. In respect of the said incident, an Application was filed before the Ld. J.M.F.C Court Pimpri, however the Application pending for adjudication. The deponent also filed the Complaint before the Tukaram Police Station in respect of the said incident. Copy of the Application before the Ld. J.M.F.C Court, Pimpri on dated 05/06/2018 and complaint before the Sant Tukaram Police Station is annexed herewith and marked as Annexure-R-3 .”*

On the basis of these facts the Learned Counsel appearing on behalf of the Respondent submits that, there is no question of transferring Marriage Petition filed by the Respondent at Kalyan Court to the Court at Pune. She submits that if the matter is transferred, irreparable loss will cause to the Respondent.

9. I heard both sides at length. It is to be noted that, the Respondent filed Marriage Petition No. 22 of 2017 before the Kalyan Court on 23<sup>rd</sup> March 2017 and

thereafter, the Applicant filed the Criminal Case under the Protection of Women from Domestic Violence Act, 2005 on 15<sup>th</sup> June, 2017. It is to be noted that the distance between Kalyan to Pune is not too much. It takes only two hours to reach from Pune to Kalyan. Apart from that earlier, the Applicant was working with D. Y. Patil Institution at Pimpri, Pune.

10. The Marriage Petition filed by the Respondent at Kalyan Court can be expedited and disposed of within time bound period.

11. The Hon'ble Apex Court in the matter of **Anita Das Vs. Srijit Das (2006) 9 S.C.C. 197** held that it is not necessary that, each and every time the matter can be transferred from one place to another as per the convenience of the wife only.

Para 3, 4 and 5 reads thus:

*“3. Even otherwise, it must be seen that at one stage this Court was showing leniency to ladies. But since then it has been found that a large number of transfer petitions are filed by women taking advantage of the leniency shown by this Court. On an average at least 10 to 15 transfer petitions are on board on each court on each admission day. It is, therefore, clear that leniency of this Court is being misused by the women.*

*4. This Court is now required to consider each petition on its merit. In this case the ground taken by the wife is that she has a small child and that there is nobody to keep her child. The child, in this case, is six years old and there are grandparents available to look after the child. The respondent is willing to pay all expenses for travel and stay of the petitioner and her companion for every visit when the petitioner is required to attend the court at Delhi. Thus, the*

ground that the petitioner has no source of income is adequately met.

5. Except for stating that her health is not good, no particulars are given. On the ground that she is not able to come to Delhi to attend the Court on a particular date, she can always apply for exemption and her application will undoubtedly be considered on its merit. Hence, no ground for transfer has been made out.

The Hon'ble Apex Court in the matter of ***Preeti Sharma Vs. Manjit Sharma*** (2005) 11 S.C.C. 535 held as under:

“2. The grounds made out are that the petitioner is an unemployed lady and totally dependent on her uncle and that she will be hard-pressed to defend the suit at Muzaffar Nagar. It is also claimed that there is a petition for restitution of conjugal rights and certain other proceedings pending in Delhi. In our view, no substantial ground for transfer has been made out. If the petitioner wishes that all cases be tried at one place, she may apply for the same and we will transfer the cases pending in Delhi to Muzaffar Nagar. Merely because the petitioner is a lady does not mean she cannot travel to Muzaffar Nagar. At the highest she can be paid expenses for travel and stay. We, therefore, direct that the respondent shall pay to the petitioner and a companion travel and stay expenses on every occasion that the petitioner is required to go to Muzaffar Nagar. The Court at Muzaffar Nagar shall ensure that such payment is made to the petitioner on every occasion. With these directions, the transfer petitions are dismissed.”

12. Considering these facts and the law declared by the Apex Court, I am of the opinion that the Applicant has failed to make out any case to allow the present application.

13. Hence, the following order:

- a. The Misc. Civil Application filed by the Applicant wife for transferring Marriage Petition No. 22 of 2017 filed by the Respondent husband before the Learned District Judge, Kalyan for decree of nullity under Section 18 of the Divorce Act, 1869 to the District Court at Pune stands rejected.
- b. Hearing of Marriage Petition No. 22 of 2017 filed by the Respondent husband before the Learned District Judge, Kalyan is expedited.
- c. This Court expect that the District Judge, Kalyan would decide the Marriage Petition No. 22 of 2017 as early as possible but in any case on or before 31<sup>st</sup> March, 2020.
- d. No order as to costs.

**(K.K.TATED, J.)**