

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Misc. Civil Application No. 91/2019

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
	Mr. Anand Mishra I/b. A. M. Saraogi for the Applicant Mr. Yogesh D. Dalvi for the Respondent

CORAM : K.K.TATED, J.
DATED : JULY 19, 2019

P.C.

1 Heard. This Application is filed by wife under section 24 of the Code of Civil Procedure, 1908 for transfer of M.P.No.643/2016 filed by the Respondent husband u/s.13(1)(ia) of the Hindu Marriage Act, 1955 for divorce from Civil Judge, Senior Division, Kalyan to Civil Judge, Senior Division, Jalgaon for hearing and final disposal on merits.

2 The learned counsel for the Applicant submits that the Applicant has to maintain her minor son. She submits that in the present proceedings, the Applicant wife has filed the Application below Exhibit- 16 in Marriage Petition No.643/2016 u/s.24 of the Code of Civil Procedure, 1908 for maintenance @ Rs.25,000/- pm and also travelling

expenses. He submits that the 5th Jt. Civil Judge, Senior Division, Kalyan by order dated 05.12.2018 awarded only Rs.8000/- pm towards maintenance from 16.03.2018 and also directed the Respondent husband to pay sum of Rs.10,000/- towards the expenses of proceedings on or before 09.01.2019. He submits that in spite of the said order from the Trial Court, the Respondent has failed and neglected to pay the maintenance charges on time. He submits that as on today sum of Rs.1,28,000/- is due and payable by the Respondent husband.

3 The learned counsel for the Applicant submits that the Applicant is a housewife. She does not have any source of income. Therefore, it is very difficult for her to come from Jalgaon to attend the divorce petition filed by the Respondent at Kalyan on each date. He submits that to travel from Jalgaon to Kalyan takes near about 10 hrs. and it is a over-night journey. She does not have any accommodation at Kalyan. He submits that therefore in the interest of justice this Hon'ble Court be pleased to transfer the said marriage petition filed

by the husband to the Civil Judge, Senior Division, Jalgaon. He submits that if the Application is not allowed, irreparable loss will be caused to the Applicant.

4 On the other hand the learned counsel for the Respondent husband submits that they have filed Affidavit-in-Reply to oppose the present Application. He submits that in the present proceedings, the Respondent has to maintain his mother who senior citizen. He submits that the Respondent's mother is not keeping well. Therefore, it will be very difficult for the Respondent to attend each date, if the matter is transferred to the Jalgaon court for hearing and final disposal on merits. He submits that the Respondent is ready and willing to pay near about Rs.2000/- towards expenses to attend the matter at Kalyan. He submits that the financial condition of the Respondent is not so strong that he could travel from Kalyan to Jalgaon and attend divorce matter. On the basis of this submission, the learned counsel for the Respondent submits that there is no substance in the application and same is required to be dismissed with costs.

5 Heard both sides at length. It is to be noted that in the present proceedings the Applicant wife is staying at Jalgaon. The distance between Jalgaon and Kalyan is near about 450 km. The Applicant has to maintain her minor son also. Apart from that she is housewife. She does not have any income. She has already filed criminal case No.134/2017 in Jalgaon court u/s. 23, 18, 19, 20, 21 of the Protection of Women from Domestic Violence Act, 2005 and same is pending for hearing and final disposal on merits. It is to be noted that though the Civil Judge, Senior Division Kalyan by order dated 05.12.2018 directed the Respondent to pay sum of Rs.8000/- by way of maintenance to the Applicant, he has failed and neglected to pay the same. As on today, sum of Rs.1,28,000/- is due and payable by the Respondent to the Applicant. Therefore, the statement made by the learned counsel for the Respondent during the course of argument that the Respondent is ready and willing to pay sum of Rs.2000/- towards traveling expenses cannot be believed or not acceptable to this court. Hence, I am of the opinion that the

Applicant has made out a case for allowing the Civil Application.

6 Hence, following order is passed:

a. M.P.No.643/2016 filed by the Respondent husband u/s.13(1)(ia) of the Hindu Marriage Act, 1955 for divorce is transferred from Civil Judge, Senior Division, Kalyan to Civil Judge, Senior Division, Jalgaon for hearing and final disposal on merits.

b. The Misc. Civil Application stands disposed of accordingly.

c. No order as to costs.

d. Parties to act on an authenticated copy of this order.

(K.K.TATED, J.)