

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISC.CIVIL APPLICATION NO.95/2018

Shila Santosh Rathod ... Applicant.
Vs.
Santosh Hunasingh Rathod ... Respondent.

Mr.Yogesh Dalvi, advocate for applicant.
None for respondent.

CORAM : K.K.TATED, J.
DATED : JUNE 12, 2019.

P.C.

Heard learned counsel for applicant.

2. Learned counsel for applicant submits that respondent is duly served by hand delivery on 5.4.2019. In support of his contention he relies on affidavit of service dated 8.4.2019. Para 2 of the said affidavit reads thus: "I say that present respondent was one of the party in Misc.Application no.147/2017 filed by present applicant, where he was personally present on 5.4.2019. He was identified by the learned advocate appearing for present applicant in the said matter. Upon service present respondent himself signed the acknowledgment and in his own hand writing, written his name, date and word 'received.'"

3. Inspite of service, no one appeared on behalf of respondent when the matter was called out.

4. By this application, u/s 24 of Civil Procedure Code,

applicant/wife is seeking transfer of Marriage Petition no.171/2017 filed by respondent u/s 13 (1)(ia) of Hindu Marriage Act, 1955 for divorce before Civil Judge, Senior Division, Pusad, Yavatmal to Civil Judge, Senior Division, Kalyan, Dist-Thane to decide in accordance with law.

5. Learned counsel for applicant submits that applicant filed Criminal Application No.147/17 under sections 12,18,19, 20 and 23 of 'Protection of Women from Domestic Violence Act', 2005 before the learned Magistrate Kalyan and same is pending for hearing and final disposal on its own merits.

6. Learned counsel for applicant submits that, in the said matter, at Kalyan Court, respondent is appearing. He submits that just to harass the applicant, respondent filed Hindu Marriage Petition no.171/2017 before Civil judge, Senior Division Pusad, Yavatmal. He submits that actually respondent is staying at Thane. In support of his contention, he relies on Exhibit A, page 14 of the application i.e. Identity Card issued by Hazarimal Somani College of Arts and Science. In this Identity card, address of respondent is stated as C-6/4 Gayatridham Phase-II, Ganesh Mandir road, Manda, Titwala(E), Thane. He submits that the Identity card itself shows that respondent is staying in Thane district and he filed the case at Pusad.

7. The learned counsel for the applicant submits that, to reach Pusad from Kalyan applicant has to take over night journey. Applicant has to look after her daughter who is taking education in 8th standard. It is very difficult for the applicant to travel more than 500-600 k.m. to attend the case

filed by respondent. He submits that in the interest of justice, this court be pleased to transfer the matter filed by respondent at Pusad to Kalyan Court. He submits that if application is not allowed, irreparable loss will be caused to her.

8. It is to be noted that on the basis of identity card (Ex.A) it is clear that respondent is staying in Thane district. Apart from that, applicant has to travel for more than 500 to 600 km to attend the case filed by respondent at Pusad. Apart from that, there is no direct railway facility from Kalyan to Pusad. Not only that, applicant has to take care of her minor daughter who is taking education at Kalyan. Considering these facts in the interest of justice, it is necessary to allow the present application so that, the Hindu Marriage petition filed by the respondent, can be heard on its own merits at Kalyan.

9. In view of the facts stated as above, I am satisfied that applicant has made out a case for allowing the application.

10. Hence, the following order.

A) Civil application is allowed in terms of prayer clause (b) which reads thus;

“b) This Hon’ble Court be pleased to exercise the power conferred u/s 24 of the C.P.C., 1908 thereby order to transfer the Hindu Marriage Petition no.171/2017 from Hon’ble Civil Judge Senior Division, Pusad, Distr: Yavatmal to Hon’ble Civil Judge, Senior Division, Kalyan, Dist: Thane to decide in accordance with law. “

B) No order as to costs.

C) Miscellaneous Civil application stands disposed of.

(K.K.TATED, J.)

