

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
REVIEW PETITION NO. 4 OF 2018**

IN

MISC. CIVIL APPLICATION (L) NO. 11133 OF 2017

Nahida Rishad Cooper

... Petitioner

Versus

Rishad Darayus Cooper

... Respondent

Ms. Taubon F. Irani for the Petitioner.

Mr.Sanjay Bhojwani a/w. Ms. Armaity S. Khushrushahi for the Respondent.

CORAM : S.J. KATHAWALLA, J.
DATED : 17TH JANUARY, 2019

P.C.:

1. By the above Review Petition, the Petitioner wife has sought review/modification of the Order passed by me dated 9th June, 2017.
2. Misc.Civil Application (L) No. 11133 of 2017 was filed by the Petitioner wife seeking transfer of Civil Suit No. 10 of 2017 filed by the Respondent husband before the learned District Court, Pune to the Parsi Chief Matrimonial Court, Bombay.
3. The said Misc. Civil Application No. 11133 of 2017 was taken up for hearing on 9th June, 2017. On that day, after hearing the Advocates for the parties, this Court informed the Advocate for the Petitioner that since the Petitioner is currently not employed, the Court is not inclined to transfer Civil Suit No. 10 of 2017 filed by the Respondent husband before the District Court, Pune to Parsi Chief Matrimonial

Court, Bombay. In view thereof, the Petitioner wife agreed to attend the proceedings before the District Court, Pune, provided she is paid expenses towards travelling, etc. The Respondent husband agreed and gave an undertaking to pay to the Petitioner wife an amount of Rs.1,500/- on each date of hearing. The Court therefore passed the following Order :

"1. The above Application is filed by the Applicant Wife seeking transfer of Civil Suit No. 10 of 2017 filed by the Respondent Husband before the learned District Court, Pune to the Parsi Chief Matrimonial Court, Bombay.

2. Since the Applicant is at present not busy with a job, the matter is not transferred to Mumbai. In view thereof, the Applicant has agreed to attend the proceedings before the Pune Court, provided she is paid expenses towards travelling etc. The Respondent undertakes to pay to the Applicant an amount of Rs.1,500/- on each date of hearing. The undertaking is accepted. The amount of Rs. 1,500/- shall be paid to the Applicant in cash on each day of the hearing and the Applicant will issue a receipt for the same. The Misc. Civil Application is accordingly disposed off."

4. About nine months thereafter, the above Review Petition is filed on the ground that the Court has not considered the main issue pertaining to non-appointment of the delegates forming part of the Jury and conduct the trial in the proceedings before the Parsi Matrimonial Court. The said submission is incorrect since the issue was not pressed by the Petitioner wife on the ground that in a Public

Interest Litigation, the Division Bench of this Court had already passed necessary directions to the Law and Judiciary Department issued Notification appointing delegates to aid in adjudicating the cases arising under the Parsi Marriage and Divorce Act, 1936, in Parsi Matrimonial Court, Pune. In fact, as recorded in the Order, the Petitioner upon realising that the Court is not inclined to grant her the reliefs as sought, agreed to attend the proceedings filed by the Respondent before the District Court, Pune upon payment of Rs.1,500/- by the Respondent on each date of hearing.

5. After the Order dated 9th June, 2017, was passed by this Court, the Petitioner wife filed Suit bearing No. 8 of 2017 against the Respondent husband before the Parsi Chief Matrimonial Court, Bombay. In that Suit, the Respondent husband filed Transfer Petition bearing MCS (ST) N. 35335 of 2017 before this Court seeking transfer of the Suit filed by the Petitioner wife being 8 of 2017 to the District Court at Pune. Admittedly, the Petitioner wife came to know about the Transfer Petition filed in her Suit only on 1st February, 2018. It is clear that the Petitioner wife therefore filed the present Review Petition on 16th March, 2018, which is nothing but a counter blast to the Transfer Petition No. 35335 of 2017, making one more attempt to seek transfer of the Civil Suit filed by the Respondent husband before the District Court, Pune, despite the request of the Petitioner wife being rejected by this Court by its Order dated 9th June, 2017, and the Petitioner herself having agreed to attend the proceedings before the District Court, Pune, provided she is paid expenses towards travelling, etc. In any event, the Law and Judiciary Department has already issued a

Notification dated 11th June, 2018, wherein the Delegates to aid in adjudicating the cases arising under the Parsi Marriage and Divorce Act, 1936 in Parsi Matrimonial Court, Pune, have been notified.

6. Today, the learned Advocate appearing for the Petitioner wife has in support of the Review Petition, submitted that the family of the Respondent husband is extremely influential in Pune and the Parsi Community in Pune is small and therefore there is every possibility of there being an unfair trial. Except for the bare allegations, no particulars are set out with regard to the family of the Respondent husband. In any event, the said allegations amount to an aspersion on the delegates/members of the Jury, namely that they will get influenced by the status of the Respondent husband in the Parsi Community. If such allegation is accepted by the Court, it would amount to acceptance of the aspersion cast on the delegates/members of the Jury, and the same will open flood gates for the litigants in all matters to file Transfer Applications and obtain orders from Courts on the ground that the other side is allegedly influential.

7. In view thereof, no case for review is made out and the above Review Petition is dismissed with costs.

(S.J.KATHAWALLA, J.)