

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
MISC. CIVIL APPLICATION STAMP NO. 13886 OF 2019

Smt.Priyanka W/o Dipak Bhujbal	.. Applicant
Vs.	
Dipak S/o Begaji Bhujbal	.. Respondent

Ms.Farhana Shah, for the Applicant.

CORAM : K.K.TATED, J.

DATE : 20th AUGUST, 2019

P.C. :

. Heard learned Counsel for the applicant.

2. Though respondent is duly served, no one appears on his behalf when the matter was called out.

3. By this Misc. Civil Application under Section 24 of the C.P.C., the applicant – wife is seeking transfer of Marriage Petition No. 76 of 2019 filed by the respondent – husband under

Section 13(1) (1a)(1b) of Hindu Marriage Act, 1955 for divorce before Civil Judge, Junior Division, Niphad, Nashik to the Family Court at Aurangabad for hearing and final disposal on its own merit.

4. Learned Counsel for the applicant submits that earlier the respondent – husband filed Hindu Marriage Petition No. 57 of 2017 under Section 9 of the Hindu Marriage Act for restitution of conjugal rights before Civil Judge, Senior Division, Gangakhed. At that time, the applicant filed Misc. Civil Application No. 182 of 2017 for transferring the Hindu Marriage Petition No. 57 of 2017 from Civil Judge, Senior Division, Gangakhed to the Family Court, Aurangabad. She submits that the application was allowed by this Court by order dated 06/11/2017. She submits that after transfer of the said matter before the Family Court at Aurangabad, no one appeared on behalf of the respondent. Hence, Hindu Marriage Petition No. 57 of 2017 stands dismissed for non prosecution.

5. Learned Counsel for the applicant submits that the applicant filed application under Protection of Women from Domestic Violence Act, 2005 and preferred interim application below Exhibit 1 for maintenance of Rs. 25,000/- each, for herself as well as her son. She submits that though application was decided by learned Judicial Magistrate, First Class (Railway Court), Aurangabad by order dated 21/11/2018 directing respondent to pay sum of Rs. 5,000/- per month to the son – Taksh Deepak Bhujbal from the date of application under Section 23 of the Protection of Women from Domestic Violence Act, 2005 till final decision, the respondent failed and neglected to pay said maintenance charges. The operative part of the said order reads thus :

“ **ORDER**

1. Application is partly allowed.
2. Non-applicant No. 1 shall pay interim maintenance of Rs.5,000/- (Rupees Five Thousands Only) per month to applicant No.2 Taksh Deepak Bhujbal from the date of this application Under Section 23 of Protection of Women from Domestic Violence Act 2005, till final decision.
3. Copy of this order be provided to the parties free of cost as per Section 24 of Protection of Women from

Domestic Violence Act 2005.”

6. Learned Counsel for the applicant submits that thereafter applicant filed present Hindu Marriage Petition No. 76 of 2019 on 16/02/2019 for divorce. Learned Counsel for the applicant submits that it is very difficult for the applicant to travel along with minor son of 4 years from Aurangabad to Niphad, District - Nashik for attending the matter for each and every date. She submits that at present applicant is residing at Aurangabad and by profession she is a teacher. She submits that in the interest of justice, present application should allowed. She submits that if application is not allowed, irreparable loss will be caused to the applicant.

7. It is to be noted that in the present proceedings, though Judicial Magistrate, First Class (Railway Court), Aurangabad, passed order on 21/11/2018 directing the respondent to pay amount of Rs.5,000/- per month by way of maintenance to the son, he failed and neglected to pay. Apart from that earlier, the respondent filed Hindu Marriage Petition

No. 57 of 2017 under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights. That matter was dismissed for non prosecution. Thereafter respondent filed present Hindu Marriage Petition No. 76 of 2019 for divorce.

8. Considering the fact that applicant have to take care of her child of 4 years and to travel from Aurangabad to Niphad along with child is difficult, I satisfied that applicant has made out a case for allowing with this Misc. Civil Application. Hence, the following order.

ORDER

i) Misc. Civil Application is allowed in terms of prayer clause (A) which reads thus :

“(A) Allow this Petition and direct the transfer the Marriage Petition No. 76 of 2019 pending before the Ld.Civil Judge, Junior Division, Niphad, Nashik, to the Court of Competent Jurisdiction that is to Family Court at Aurangabad, as per the provisions of Section 24 of the Code of Civil Procedure, 1908.”

(ii) Application is allowed accordingly with cost of Rs.5,000/-

(iii) Respondent to pay cost of Rs.5,000/- within four weeks from the date of communication.

(K.K.TATED, J.)