

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

MISCELLANEOUS CIVIL APPLICATION NO. 192 OF 2019

Mrs. Padmini Gangadhar Gobbure ... Applicant

V/s.

Mr. Gangadhar Somnath Gabbure ... Respondent

Mr. Vishwanath Patil a/w. Mr. Kewal B. Ahya for the Applicant.

Ms. Rutuja Chakor I.by Mr. Sachin B. Thorat for the Respondent.

CORAM : SMT. SADHANA S. JADHAV, J

DATED : 5th December, 2019.

P.C. :

. This is an application praying for transfer of Miscellaneous Application No.212 of 2017 filed by the respondent seeking Restitution of Conjugal Rights. The said application is filed before the learned Principal Judge, Family Court at Solapur.

2. The applicant herein got married to the respondent on 26th November 2014 at Maindargi, Solapur. The couple is blessed with a daughter on 15th June 2016. The child was born at Pune. It appears from the record that the appellant herein was constrained to file the petition under the provisions of Protection of Women from Domestic Violence Act, 2012 at Pune which is registered as Criminal Miscellaneous application No. 1065 of 2017. The learned counsel submits that since the appellant is wholly dependent on her brother she had to shift from Solapur to Pune and residing at Pune.

3. It appears from the record that the respondent herein had filed an application seeking rejection of the application under the provisions of Protection of Women from Domestic Violence Act, 2005 for want of jurisdiction.

4. The learned Judicial Magistrate First Class, Pune by an order dated 26th April 2019 has been pleased to reject the said application. The learned Judicial Magistrate First Class has held that the appellant herein had submitted the birth certificate of her daughter showing that the daughter was born at Pune. The temporary address of the applicant which shows that she is residing at Shinde Wasti, Ravet at Pune.

5. It is pertinent to note that the order dated 26th April 2019 passed by Judicial Magistrate First Class, Pune has not been challenged and has attained finality. The learned counsel for the respondent submits that the respondent herein is an Engineer and he is working at Solapur. The respondent has filed Affidavit-in-Reply and tendered in Court on 5th December 2019. It is also submitted that the appellant herein had filed an application seeking traveling expenses to attend the proceedings before the Family Court at Solapur and that he had agreed to pay Rs.300/- on every date.

6. It is pertinent to note that at that stage also, that is when the application below Exhibit-12 in Marriage Petition No.212 of 2017 was being heard. The appellant herein had filed documents to show that she is residing at Pune and she has filed an application in the Court of Judicial Magistrate First Class, Pimpri, Pune under the provisions of Protection of Women from the Domestic Violence Act 2005 and had also submitted an affidavit of her landlady at Pune and

showing her address at Pune. However, Family Court had only considered the issue that the summons were served upon her at Maindargi, Solapur. It was not taken into consideration that said petition was filed in the year 2017. The learned Court had considered that her maternal house is at Maindargi, Solapur and therefore, she could not claim traveling expenses from Pune to Solapur. The order was passed on 27th September 2018.

7. In the present case the order dated 26th April 2019 has attained finality and there are proceedings pending before the Pune Court. The learned counsel for the appellant submits that her daughter is hardly 3 years old and since the appellant is residing at Pune at the mercy of her brother along with her child, it is difficult for her to travel from Pune to Solapur. It is not on record as to whether she is receiving any maintenance from her husband either for herself or for her child and therefore, it is crystal clear that the appellant is residing at the mercy of her brother who is working at Pune.

8. In view of this, the Miscellaneous Civil Application deserves to be allowed in terms of prayer clause (a) and stands disposed of. The proceedings from M.A No. 212 of 2017 before the Family Court Solapur are transferred to the Family Court at Pune.

(SMT. SADHANA S. JADHAV, J)