

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
MISCELLANEOUS APPLICATION NO. 197 OF 2018

Sau Sonal Shivdatta Gaikwad .. Applicant
vs.
Shri. Shivdatta B. Gaikwad .. Respondent

Mr. Balasaheb R. Deshmukh a/w. Mr. J.S. Yadav for the Applicant.
Mr. Mandar Soman for the Respondent.

CORAM : M. S. SONAK, J.
DATE : 11 MARCH 2019.

ORAL JUDGMENT:

1] Heard Mr. Balasaheb Deshmukh for the applicant and Mr. Mandar Soman for the respondent.

2] By this petition, the petitioner seeks transfer of Hindu Marriage Petition No. 511 of 2015 from the Court of learned Civil Judge, Senior Division at Sangli to the Family Court at Solapur.

3] Mr. Deshmukh learned counsel for the applicant, submits that this is a case where the applicant – wife has been harassed by the respondent – husband thereby prompting the applicant – wife to file a FIR invoking the

provisions of Section 498-A of I.P.C. He submits that the applicant did attend the proceedings at Sangli on two or three occasions, but however was threatened by the respondent with dire consequences. Mr. Deshmukh submits that the applicant has filed proceedings for maintenance under Section 125 of Cr.P.C. at Solapur and the same are pending. He submits that the distance between Solapur and Sangli takes at least two to three hours to cover. Mr. Deshmukh points out that the applicant has to be accompanied by her father, who is aged almost 68 years. For all these reasons, Mr. Deshmukh submits that this is a fit case where transfer should be ordered.

4] Mr. Mandar Soman, learned counsel for the respondent, submits that initially the respondent gave notice for restitution of conjugal rights. He points out that the applicant has agreed for restitution, but thereafter backed out. He points out that the petition for divorce was instituted on 9th October 2015. He points out that the applicant has appeared in the matter and even filed a written statement. He points out that the applicant has already filed an affidavit in

lieu of examination-in-chief on 28th February 2018. He submits that the allegations as regards threats are baseless and nowhere substantiated. For all these reasons, he submits that the petition for transfer may be dismissed.

5] According to me, on the basis of mere allegations or threats which are totally unsubstantiated, the request for transfer of proceedings cannot be entertained. The record indicates that the applicant has appeared before the Sangli Court and defended herself. The matter is now for evidence and there is no point in transferring the matter at this stage, as otherwise, the matter is bound to be delayed further. The applicant has already filed a complaint under section 498 – A of IPC and the investigations are pending.

6] Accordingly, no case is made out for transfer. No doubt, the respondent will have to bear the expenses of not only the applicant but also her father/mother who are required to accompany her on the date of hearing. As pointed out the distance between the two places will be covered in two to three hours even by use of public transport. Accordingly, the

interests of justice will be met if the respondent is directed to pay the petitioner travel and other expenses which have determined at the rate of Rs.2500/- for every date on which the matter is fixed before the Sangli Court and on which date the applicant attends the Court proceedings. Accordingly, the respondent is directed to pay the applicant on the next date of hearing an amount of Rs.10,000/- which shall be payment in respect of date fixed as also advance payment in respect of the next three dates.

7] The learned Trial Judge is requested to ensure that such amount is indeed paid by the respondent to the applicant on the next date itself. If the matter proceeds beyond four dates, again the respondent is directed to make payment of further amount of Rs.10,000 in advance . In case of default in making payments, the learned Trial Judge to make appropriate orders. The matter should not proceed unless the payment in respect of each of the dates are regularly made.

8] The application is accordingly disposed of in the aforesaid terms.

9] Parties to now appear before the learned Civil Judge, Senior Divison, Sangli on 25th March 2019 at 3.00 p.m.. On this date, the respondent to ensure that he pays an amount of Rs.10,000/- to the applicant.

10] Further, the directions are issued to the learned Judicial Magistrate at Mohol to dispose of Criminal Miscellaneous Application No. 428 of 2015, in which, the applicant has applied for maintenance, as expeditiously as possible and in any case within a period of one year from today.

11] All concerned to act on the basis of an authenticated copy of this order.

(M. S. SONAK, J.)