

Rane

1/5 MCA-220-2018  
13.2.2019

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**MISC. CIVIL APPLICATION NO. 220 OF 2018**

Anjali Amit Kambale

.....Applicant

V/s.

Amit Pralhad Kambale

....Respondent

\* \* \* \*

Mr. Yogen P. Kakade with Ms. Bhagyashree Ghute, Advocate  
for the applicant.

None for the respondent.

**CORAM : SANDEEP K. SHINDE, J.**

**Wednesday, 13<sup>th</sup> February, 2019.**

**P.C. :**

1. It is an application under Section 24 of the Civil Procedure Code, 1908 filed by the wife seeking transfer of proceedings in Marriage Petition No. 387 of 2018 pending on the file of the Learned Civil Judge Senior Division, Sangli to the Family Court at Pune. These proceedings are filed for restitution of conjugal rights by the respondent-husband in

June, 2018.

2. Heard learned Counsel for the applicant. Though the respondent is served, he has chosen not to participate in these proceedings.

3. The marriage between the parties was solemnised on 28<sup>th</sup> November, 2014. However, their temperament seldom matched and as such a petition under Section 13B of the Hindu Marriage Act was filed for dissolution of marriage by consent. The respondent-husband alleged and claimed that, his consent was obtained by fraudulent means and therefore the petition for dissolution of marriage by mutual consent was dismissed by the IIIrd Joint Civil Judge Senior Division, Sangli on 14<sup>th</sup> December, 2017.

4. It is submitted by the learned Counsel for the applicant that, the applicant has filed following three proceedings against the respondent at Pune, namely :

*(i) application under the Domestic Violence Act being Application No. 491 of 2017 dated 22<sup>nd</sup> December, 2017.*

*(ii) Petition No. 1035 of 2018 for dissolution of marriage dated 29<sup>th</sup> June, 2018 in the Family Court at Pune.*

*(iii) RCC No. 1929 of 2018 a criminal case arising out of an offence punishable under Section 498A Indian Penal Code.*

5. It is submitted that in the proceedings under the Domestic Violence Act, the Court concerned has awarded maintenance to the applicant vide order dated 22<sup>nd</sup> June, 2018. It is submitted, the respondent has not paid the maintenance to the applicant till date. It is further submitted that, the respondent is not attending the proceedings filed against him by the applicant.

6. The applicant is residing with her parents at Pune. It is submitted that, she has no independent source of income. More so, though the maintenance amount is awarded, the same has not been paid by the respondent.

7. That from the aforesaid facts, in my view, the proceedings filed by the husband for restitution of conjugal rights in the Court at Sangli, if not transferred to Pune, it will cause immense inconvenience to the applicant. It cannot be ignored, inspite of service, the applicant has chosen not to participate in the proceedings. Even otherwise, the respondent is required to attend aforesaid three proceedings, pending against him at Pune.

8. The Supreme Court, as well as, this Court in catena of judgments has consistently taken a view that, while considering an application under Section 24 of the Code of Civil Procedure, 1908, convenience of the wife is required to be considered.

9. I therefore pass the following order :

*(i) The learned Civil Judge Senior Division, Sangli is directed to transfer the papers and proceedings in Marriage Petition No. 387 of 2018 to the Family Court at Pune.*

*(ii) The parties, as well as the, learned Civil Judge Senior Division, Sangli to act on authenticated copy of this order.*

*(iii) Both the parties are directed to appear before the learned Family Court at Pune on 20<sup>th</sup> March, 2019.*

*(iv) The Miscellaneous Application No. 220 of 2018 is allowed in the aforesaid terms. No orders as to costs.*

**(SANDEEP K. SHINDE, J)**