

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISC.CIVIL APPLICATION NO. 289/2018

Kavita B. Vannier	V/s.	... Applicant
Balasantosh C. Vannier		... Respondent

Mr.Abbhishekh P. Deshmukh, advocate for the Applicant.
Mr.Jacob D. Mandharan for respondent.

CORAM: K.K. TATED, J.

DATED : JUNE 21, 2019

P.C. :

Heard learned counsel for parties.

2. By this Miscellaneous Civil Application u/s 24 of Code of Civil Procedure, 1908, applicant/wife is seeking to transfer Marriage Petition No.A-389/2018 filed by the respondent for divorce u/s 13(1)(ia) (ib) of Hindu Marriage Act, in the court of Learned Civil Judge, Senior Division, Kalyan to Family Court at Pune for hearing and final disposal on its own merits.

3. Learned counsel for applicant submits that, applicant is residing at Pune with her father. He submits that applicant is not keeping well and applicant's father is a senior citizen, therefore, it is very difficult for her to travel from Pune to Kalyan on each and every date. Even applicant's father is a senior citizen. He submits that even applicant is not keeping well and in support of that , he placed on record medical papers.

4. Learned counsel for applicant submits that in the present proceedings, applicant filed case bearing P.A.No.496/2015 before Family Court at Pune on 29.4.2015. In that petition applicant preferred an application below Exh. 5 for interim maintenance u/s 24 of the Hindu Marriage Act, 1955. After hearing both sides, the Family Court by its order dated 2.3.17 directed respondent to pay interim maintenance @ Rs.10,000/- per month from the date of application till the date of decision of petition. Though the order passed by the Family Court at Pune, directing respondent to pay maintenance charges per month, the respondent/husband failed and neglected to pay the same within time. As on today more than Rs.2,95,000/- is due and payable by the respondent/husband.

5. Learned counsel for applicant submits that, initially respondent filed divorce petition no.1200/14 in the Court of learned Civil Judge, Senior Division at Kalyan. At that time, applicant filed Misc. Civil Application no.233/2015 u/s 24 of Civil Procedure Code for transfer. This Court (Coram: R.D. Dhanuka,J) by order dated 9.12.2015 granted adinterim relief in terms of prayer (b) i.e. stay of divorce petition no.1200/2014 filed by respondent.

6. Learned counsel for applicant submits that thereafter Misc. Civil application no.233/2015 appeared before this court on 22.11.2016. On that day, applicant pointed out that, respondent had withdrawn divorce petition no.1200/2014. In view of subsequent development, this Court vide order dated 22.11.2016

disposed of applicant's application u/s 24 of Code of Civil Procedure, 1908. Thereafter, respondent with malafide intention filed marriage petition O.A-389/2018 at Kalyan on 17.3.2018 for divorce.

7. The learned counsel for applicant submits that applicant filed petition u/s 9 of the said Act on 29.04.2015 before Family Court at Pune. Respondent already representing through his advocate in petition filed by applicant u/s 9 of Hindu Marriage Act, before Family Court at Pune. Not only that, the Family Court decided application below Exh. 5 in PA no.496/2015 after hearing both sides. He submits that in view of these facts, this court be pleased to transfer the marriage petition filed by respondent at Kalyan Court to Family Court at Pune for hearing and final disposal alongwith her petition u/s 9 of the Hindu marriage Act, which is pending for hearing. If application is not allowed, irreparable loss will be caused to applicant.

8. On the other hand, learned counsel for respondent/husband vehemently opposed the present application. He submits that distance between Kalyan and Pune is only 130 km. Apart from that respondent is partially disabled as he lost sight of left eye. Therefore, it is difficult for him to travel from Kalyan to Pune if the matter is transferred there. Because of his personal disability, respondent appointed his mother as Power of Attorney holder who is a senior citizen. If the matter is transferred to Pune, then it will be very difficult for respondent and his mother to attend the Court at Pune on each and every day. Learned

counsel for respondent submits that respondent is ready and willing to provide reserved railway tickets to the applicant, as and when matter appears at Kalyan Court. If the matter is transferred from Kalyan to Pune, irreparable loss will be caused to respondent. Therefore, there is no substance in the present application, and same is required to be dismissed with costs.

9. I have heard both the sides. It is to be noted that applicant is not keeping well. In support of her contention, applicant placed on record medical papers. Apart from that applicant already filed petition u/s 9 for conjugal rights being case no.PA 496/2015 at Family Court at Pune. In that petition, respondent appeared through his advocate. Not only that the respondent participated in the hearing of application below Exh.5 for interim maintenance u/s 24 of Hindu Marriage Act filed by applicant. Earlier, respondent filed divorce petition o.1200/2014 in the court at Kalyan. That petition was stayed by this court by order dated 9.12.2015 in Misc. Civil Application No. No.233/2015. Subsequently, said divorce petition No.1200/2014 was withdrawn by respondent. Hence, applicant's application for transfer was disposed of by this Court, by order dated 22.11.2016. Not only that, during the pendency of applicant's petition u/s 9 of Hindu Marriage Act, at Pune, respondent filed Marriage petition no.A-389/2018 u/s 13 of Hindu Marriage Act for divorce before court at Kalyan on 17.3.2018. Admittedly, divorce petition filed by respondent is subsequent. Reasons given by respondent for opposing present application about personal disability, senior citizen and financial trouble, can not be considered, in the facts

and circumstance of present case, because petition filed by the applicant u/s 9 is, prior to petition filed by respondent for divorce. In view of this fact, I am satisfied that applicant has made out a case for following order.

a) Marriage Petition No.A-389/2018 filed by respondent/husband for divorce u/s 13(1)(ia) (ib) before Civil Judge, Sr.Division, at Kalyan is transferred to Family Court at Pune for hearing and final disposal on its own merits.

b) Family court is directed to decide the transferred divorce petition filed by respondent alongwith P.A. No.496/2015 filed by applicant u/s 9 of Hindu Marriage Act.

c) Liberty granted to respondent to make appropriate application in the Family Court at Pune for early hearing of both matters after clearing dues of maintenance charges.

d) Parties to act on authenticated copy of this order.

e) Application stands disposed of.

(K. K. TATED, J.)