

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
MISCELLANEOUS CIVIL APPLICATION NO.100 OF 2019

Mrs. Swapnali Dhananjay Raut
@ Swapnali Mahendra Patil

...Applicant

vs.

Mr. Dhanjay Jaywant Raut

...Respondent

....

Ms. Ayesha S. Baroodkar, for the Applicant.

Ms. Tejas Kapre, for the Respondent.

....

CORAM : S.C. GUPTA, J.

DATED : 5 NOVEMBER, 2019

P.C. :

. Heard learned Counsel for the parties.

2. This MCA is filed by the Applicant-wife, who is a respondent to the marriage petition filed by the Respondent-husband for divorce in the Court of Civil Judge, Senior Division, Vasai. The Applicant-wife has filed a marriage petition for restitution of conjugal rights under Hindu Marriage Act before the Civil Judge, Senior Division, Kalyan. By this MCA, she seeks an order of transfer of the Respondent's marriage petition from the Court of CJSD, Vasai to the Court of CJSD, Kalyan and have them heard together. The case of the Applicant is that she is residing at Dombivali with her parents, who are senior citizens, along with her minor daughter, who is aged five years. It is submitted that the Applicant is financially dependent on her parents for herself and her

daughter. It would be difficult for her to attend the hearings of the divorce petition at Vasai. She submits that no prejudice would be caused to the Respondent, if the petition is transferred from Vasai to Kalyan. It is submitted that the Respondent, anyway, has been actively contesting proceedings for restitution of conjugal rights filed by the Applicant at Kalyan and that no serious prejudice would be caused, if he is also made to simultaneously prosecute his divorce petition at Kalyan.

3. Learned Counsel for the Respondent-husband vehemently opposes the application. Learned Counsel relies on a decision of this Court in the case of **Supriya vs. Kamlesh**¹, where this court held that neither lack of funds nor simple inconvenience is a sufficient ground for allowing a transfer application.

4. The question in the present MCA is not of a mere inconvenience, though the Applicant has a serious case to urge even in that behalf. The Applicant has a minor daughter of 5 years and is residing at Dombivali, a place from where it is inconvenient for her to attend hearings of the petition filed in Vasai. But what is more important is that having regard to the subject matter of the two proceedings, it is clearly advisable and in the interest of justice to have both proceedings clubbed and heard together. If they are to be so heard and clubbed together, it is in the interest of justice, having regard to the facts of the case, that they be tried together at Kalyan, rather than at Vasai.

¹MCA (Tr.) No.36 of 2017 decided on 19-6-2017. (Nagpur)

5. In the premises, the MCA is allowed in terms of prayer clause (a). Court of Civil Judge, Senior Division at Kalyan, which is hearing Marriage Petition No.524 of 2018, filed by the Applicant herein, shall club Marriage Petition No.120 of 2018 to be transferred from the Court of Civil Judge of Vasai to the former Court and hear the two petitions together. MCA is disposed of accordingly.

(S.C. GUPTE, J.)

Smita
Gonsalves

Digitally signed by
Smita Gonsalves
Date: 2019.11.08
14:24:59 +0530