

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
MISCELLANEOUS CIVIL APPLICATION NO. 56 OF 2021

Shahenaz Faizal Modak Maidan

Shahenas Murtuz Shaikh

.. Applicant

Versus

Faizal Yunus Modak

.. Respondent

...

Mr. Amit Jamsandekar with Archita A. Gharat and Vighnesh Kamat for the applicant.

Ms.Vrushali Maindad i/b Savita Prabhune for the respondent.

CORAM: BHARATI DANGRE, J.

DATED : 24th NOVEMBER, 2021

P.C:-

1 Heard learned counsel for the applicant. Ms.Vrushali Maindad i/b Savita Prabhune appear for the respondent.

2 By the present Application filed under Section 24 of the Code of Civil Procedure, the applicant wife is seeking transfer of Regular Civil Suit No.10 of 2020 filed by the respondent husband in the Court of Civil Judge, Sr. Division, Ratnagiri seeking restitution of conjugal rights.

3 The marriage between the applicant and respondent was solemnized on 15th June 2017 as per Muslim laws and rituals and the allegation of the applicant is to the effect that she has

suffered harassment at the hands of the respondent and was compelled to return to her parental house. This resulted in lodging of a complaint in the police station at Akkalkot as regards the demand of dowry and alleging harassment. Similarly, the Application came to be instituted by her under Section 125 of the Cr.P.C, claiming maintenance before the Magistrate at Akkalkot, since in absence of any means of sustenance for herself and her one year old child, she was left destitute. In January 2020, the respondent husband has instituted the Petition for Restitution and the said came to be instituted on 3rd January 2020 before the Civil Judge, Sr. Division, Ratnagiri of which transfer is sought to the Court of Civil Judge, Sr. Division, Solapur or Family Court at Solapur.

4 Heard learned counsel for the applicant and perused the application. The grounds for transfer are set out in paragraph no.10 of the application where the applicant has stated that she is residing in Akkalkot, District Solapur with her young daughter aged 2 ½ years, her mother and her younger brother. The distance between Solapur and Ratnagiri is estimated to be 393 kms and in view of the said distance as well as without having any grounds of sustenance, and particularly when such a travel would cause loss of discomfort on account of the small child being carried for the hearing, since the child is very young, and cannot be left back and it would drain all her finances if she is required to

undertake the journey to undertake the proceedings at Ratnagiri. Her younger brother is aged 22 years and do not contribute to the earnings of the family is also projected as her inability to arrange the finances.

Further, her mother who is engaged in a factory as a daily wage earner, if asked to accompany will lose her daily wages, is also another submission.

5 Taking into consideration the reasons set out in paragraph no.10 and 11 of the application, I deem it appropriate to grant the application, taking into consideration the inconvenience caused to the applicant to travel a distance of approximate 350 kms along with small child of 2 ½ years.

6 Miscellaneous Civil Application is therefore, allowed in terms of prayer clause (a) which read thus :-

“(a) This Hon’ble Court be pleased to transfer the Regular Civil Suit No.10 of 2020 pending in the Court of the Civil Judge, Sr. Division, Ratnagiri filed by the Respondent to the Civil Court, Sr. Division at Solapur or Family Court, Solapur”.

7 Learned Civil Judge, Sr. Division, Ratnagiri is directed to forthwith transmit the Record and Proceedings of Regular Civil Suit No.10 of 2020 pending on its file to the Court of Civil Judge, Sr. Division, Solapur or Family Court at Solapur.

SMT. BHARATI DANGRE, J

