

Arjun

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

MISC. CIVIL APPLICATION NO.258 OF 2022

Pranaya Prathamesh Gujar

...Applicant

V/s.

Prathamesh Vijaykumar Gujar

...Respondent

Mr. Nilesh Wable, for the Applicant.

Mr. S. H. Pasi a/w Mr. D. V. Saroj, for the
Respondent.

CORAM : MADHAV J. JAMDAR, J.

DATE : 18th NOVEMBER, 2022

P.C.:

1. Heard Mr. Nilesh Wable, learned counsel appearing for the Applicant and Mr. S. H. Pasi alongwith Mr. D. V. Saroj, learned counsel appearing for the Respondent.

2. By the present Miscellaneous Civil Application filed under Section 24 of the Code of Civil Procedure, 1908 the Applicant is seeking relief of transfer of the Marriage Petition No. A-440 of 2019 pending before Family Court at Thane to Family Court at Nashik.

3. The marriage between the Applicant and the

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Respondent took place on 19th February, 2018. Out of said wedlock a Daughter named Sanvi was born on 29th April, 2019. In the meanwhile, on 23rd October, 2018, the Applicant left house of the Respondent and on the very day lodged FIR bearing No. 298 of 2018 under Section 498-A, 406, 34 of the Indian Penal Code, 1860. The Applicant filed Criminal Application No. E-22 of 2019 under Section 125 of Code of Criminal Procedure, 1973 before the Family Court, Nashik seeking maintenance. The Applicant also filed Application No. 78 of 2019 under the Domestic Violence Act before the learned J.M.F.C. Court, Nashik. It appears that on 3rd February, 2020 in said Domestic Violence proceeding, maintenance of Rs. 5000/- was granted to the Applicant from the date of Application. Although, there is dispute about the quantum of arrears, it is undisputed that the said maintenance amount has not been paid for considerable period. According to Mr. Wable, learned counsel appearing for the Applicant, there are arrears to the tune of Rs. 1,69,000/- whereas, Mr. Pasi, learned counsel appearing for the Respondent states that, arrears are to the tune of Rs. 45,000/-.

4. In the meanwhile, the Marriage Petition No. A-440 of 2019 was filed by the Respondent in the Family Court, Thane on 30th September, 2019 seeking divorce under Section 31-1(i-a) of Hindu Marriage Act, 1955.

5. The present Miscellaneous Civil Application seeking transfer was filed on 26th March, 2022, this Court issued notice to the Respondent on 6th July, 2022 and the same was served on the Respondent and thereafter, on 26th July, 2022 during the pendency of this Miscellaneous Civil Application "No Written Statement" order was passed against the Respondent. On 26 July, 2022 "No Written Statement" order has been passed, and, thereafter, evidence affidavit of the Respondent has been filed on 26th August, 2022. Mr. Pasi, learned counsel submits that as order was passed to the effect that unless the evidence affidavit is filed, the Petition will be dismissed and, therefore, the Respondent filed evidence affidavit. In any case, it is admitted position that after issuance of notice by this Court in the Miscellaneous Civil Application and after service of the same on the Respondent the trial proceeded very expeditiously.

6. It is the contention of Mr. Wable, learned counsel that

the distance between Nashik and Thane is about 160 kms. He submitted that the daughter of the Applicant is about 3 years old and therefore, it is not possible for the Applicant to attend the hearing of the said Petition in the Court of Family Court at Thane. He submitted that although maintenance of Rs. 5000/- has been granted, Respondent is very irregular in payment of maintenance and there are total arrears of Rs. 1,69,000/-

7. Mr. Pasi, learned counsel initially tried to oppose the prayer of transfer on the ground that trial of said Family Court Petition at Thane has substantially progressed, however, in view of the factual position, consented for the transfer of Marriage Petition No. A-440 of 2019 pending before the Family Court at Thane to Family Court at Nashik. He only requested that the said Marriage Petition be expeditiously heard. He further submitted that, the Respondent will pay maintenance of Rs. 5000/- per month and as far as arrears are concerned, he will clear the same within a period of 6 months by paying equal monthly instalments.

8. In view of the above submissions of the learned counsel

of the Respondent and for the above reasons, the Marriage Petition No. A-440 of 2019 pending before the Family Court at Thane is transferred to Family Court at Nashik.

9. It is clarified that, the Applicant can take appropriate steps if so advised regarding "No Written Statement" order and for setting aside other orders, if any, which may have been passed adverse to her interest. Contentions of both the parties in that behalf are expressly kept open.

10. The learned Judge, Family Court at Nashik is requested to dispose of the said Marriage Petition No. A-440 of 2019 expeditiously.

11. The Miscellaneous Civil Application is disposed of in above terms with no order as to costs.

(MADHAV J. JAMDAR, J.)