

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

MISCELLANEOUS CIVIL APPLICATION NO. 166 OF 2022

Swati Vinay Padewal .. Applicant
v/s.
Vinay Hiralal Padewal & Ors, .. Respondents

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Mr. Madhusudan Pareek for the applicant.

Mr. Vishal V. Rankhambe a/w Ms. Aparna V. Rankhambe for
respondent no.1.

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CORAM : KAMAL KHATA, J.

DATED : 27TH JULY 2023.

P.C. :

1. This Miscellaneous Civil Application is filed by the Applicant wife under section 24 of the Civil Procedure Code 1908, for transfer of Marriage Petition no.2782/2021 filed by the respondent husband from Family Court, Bandra to the Family Court at Nashik.
2. The applicant's case is that the marriage took place at Nashik on 7th December 2008. Out of said wedlock, one son was born. On account of marital discord, the applicant is staying separately since 22nd May 2019. She has been

residing with her parents. The applicant has filed the D.V. proceedings under Section 498-A at Nashik on 10th July 2019. On the other hand, the respondent has filed a Marriage Petition No.A-2782/2021 for divorce on 24th September 2021 at Family Court at Bandra, Mumbai.

3. Learned counsel for the applicant submits that the applicant was ill treated, and therefore, she has to live at her maternal home. She is unable to travel as she has no source of income and is dependent upon her parents for livelihood. Besides she has to look after her old aged parents and she is undergoing psychiatrist treatment. The distance between Nashik to Mumbai is around 175 kms. which would take around 4 to 5 hours time to travel. It is therefore submitted that application be allowed.

4. Learned counsel for the respondent, on the other hand, states that the applicant has been living on her own with her parents. It is a case of suppression of the material facts as the applicant was staying in Mumbai at least till July 2019 though it is averred that the applicant left Mumbai on 28th May 2019 as evinced by the NC complaint filed by the applicant at Lower Parel Mumbai on 18th June 2019. It is

submitted that the applicant is an adulterous woman. On 17th June 2023, the respondent filed a complaint before M.I.D.C. Police Station N.C. bearing no.16339/2023 against the applicant for abusing on phone on various dates.

5. It is submitted that the applicant is working and presently residing at Pune. It is also submitted that the present application is only taken out with a view to harass the respondents. It is further submitted that the son is residing with the respondent and not with the applicant. The respondent no.1 has agreed to pay the travelling expenses to the applicant in a sum of Rs.1500/- on each date, she visits the Court. Therefore, it is submitted that the transfer application be rejected.

6. In my view, the applicant has fallaciously averred that she is unable to travel and she has no source of income. It is a well settled principle of law reiterated in the case of Ramjas Foundation v Union of India that the courts have declined reliefs to parties who have not come to court with clean hands¹ and deserves to be thrown out at any stage². In my view on the ground of making false averments in the

¹ (2010) 14 SCC 38

² S.P. Chengalvaraya Naidu v Jagannath (1994) 1 SCC 1

application itself the applicant is not entitled to any relief and this application deserves to be rejected and I pass the following order;

(i) Application is rejected.

(ii) However, the respondent no.1 is directed to pay a sum of Rs.1500/- to the applicant only on such dates that the Court requires her physical presence.

(iii) It is also directed to consider granting Video Conferencing facility on the dates when the physical presence of the applicant-wife is not required.

(iv) Application is disposed of in the above terms.

(v) All concerned to act on the authenticated copy of this order.

(KAMAL KHATA, J.)