

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12640 OF 2019

Anuradha Prashant Pendsay

.. Petitioner

Versus

Prashant Suresh Pendsay

.. Respondent

- Mr. Samir Kumbhakoni for Petitioner

CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 25, 2023

P.C.:

- 1.** Heard Mr. Kumbhakoni, learned Advocate for Petitioner.
- 2.** Record indicates that though the Respondent has been duly served, none appears for Respondent. Considering the issue, hearing of this Petition cannot be protracted
- 3.** The order impugned herein is dated 18.04.2019 passed in Civil Misc. Application No. 420 of 2019 whereby the Petitioner has made an Application seeking transfer of Maintenance Petition No 100 of 2015 pending on the record and file of the Civil Judge Senior Division, Pune to Family Court, Pune.
- 4.** It is the contention of the Petitioner that the substantive Petition seeking dissolution of marriage between the parties is filed before the Family Court, Pune which is numbered as 1286 of 2016. In that view of the matter, Petitioner made an Application before the

District Court, Pune under the provisions of Section 24 of CPC. After hearing the Petitioner, learned District Judge has rejected the Application on the ground that both the District Judge and the Family Court have concurrent jurisdiction and in that view of the matter, the provisions of Section 24(1) applies to the Petitioner's case and it does not give right to the Petitioner to seek transfer of the proceedings from one Court to another.

5. Mr. Kumbhakoni would submit that the substantive proceedings seeking dissolution of marriage between the parties is pending before the Family Court, Pune under the Hindu Marriage Act and the Family Court, Pune undoubtedly is equipped with the proceedings between the parties who are matrimonially wedded and in that view of the matter, considering that all substantive issues between the parties would be agitated in the said proceedings learned District Judge ought to have considered the transfer of the maintenance proceedings to the Family Court. He submitted that the maintenance proceedings would ultimately form one part of the entire gamut of the proceedings / facts that would otherwise be agitated between the parties in the Family Court. He submitted that in order to avoid multiplicity of proceedings, it would be in the interest of justice, that the maintenance proceedings be transferred to the Family Court where the substantive proceeding is pending.

6. I am in complete agreement with Mr. Kumbhakoni. The Petition cannot be ousted merely on the ground of applicability of the provisions of Section 24(1) as a matter of discretion of the Court. One has to look into the aspect of any prejudice that would be caused to the parties and only thereafter determine the issue. In the present case considering that the substantive proceedings are pending in the Family Court, it would be worthwhile and in the interest of justice to transfer the maintenance proceedings to the said Family Court.

7. In view of the above, the impugned order deserves to be quashed and set aside as the same is not sustainable.

8. Hence, the impugned order dated 18.04.2019 passed by District Court, Pune is quashed and set aside. Maintenance Petition No. 100 of 2015 be transferred from the Court of Civil Judge Senior Division, Pune to Family Court, Pune wherein P.A. No. 1286 of 2016 is pending and both the Petitions be heard by the learned Family Court, Pune together.

9. With the above direction, Writ Petition is disposed.

[MILIND N. JADHAV, J.]

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signed by
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