
(2012) 06 BOM CK 0122

In the Bombay High Court

Case No : Misc. Civil Application No. 18 of 2012

Sau. Sonal Prafull Wani

APPELLANT

Vs

Shri. Prafull Sadashiv Wani

RESPONDENT

Date of Decision : 14-06-2012

Acts Referred:

Protection of Women From Domestic Violence Act, 2005 — Section 12, 19, 2, 20, 22

Citation : (2013) 1 ALLMR 386 : (2012) 5 BomCR 877 : (2013) 1 DMC 779

Hon'ble Judges : S.S. Shinde, J

Bench : Single Bench

Advocate : Vijay Deshmukh and Mr. Vaibhav Patil, for the Appellant; B.S. Shinde, for the Respondent

Judgement

S.S. Shinde, J.—Rule. Rule made returnable forthwith. Heard with the consent of the parties. This application is filed praying therein Petition No. A 290 of 2011 pending before the Family Court, Aurangabad to the Court of the Civil Judge, Senior Division, Jalgaon.

2. It is the case of the applicant that, the applicant got married with the respondent on 9th May, 1999. Out of the wedlock, there are two children. They are taking education at Raver. It is the case of the applicant that, the respondent started ill treating the applicant and therefore, she was constrained to file Complaint against the respondent under Sections 2, 12, 19, 20 and 22 of the Protection of Women from Domestic Violence Act, which is pending in the Court of the Judicial Magistrate, First Class, Raver. Another application was filed being Misc. Application No. 162 of 2008 in the Court of the Judicial Magistrate, First Class, Raver, which came to be allowed. It is not in dispute that, the respondent is paying Rs.5000/- per month towards maintenance to the applicants. The respondent herein filed Petition for Restitution of Conjugal Rights in the Family Court, Aurangabad on 2nd September, 2011. Hence this application for transfer of the proceedings of Hindu Marriage Petition No. A. 290 of 2011 from the Family Court, Aurangabad to the Court of the Civil Judge, Senior Division, Jalgaon.

3. The Counsel appearing for the applicant submits that, the applicant has no financial source to travel from Raver to Aurangabad. She has to look after two children aged 6 years and 11 years. They are taking education at Raver. It is further submitted that, there are old aged parents to whom, the applicant has to look after. Therefore, relying upon the grounds taken in the application, the Counsel appearing for the applicant would submit that, the proceedings of Hindu Marriage Petition No. A. 290 of 2011 pending in the Family Court, Aurangabad may be transferred to the Court of the Civil Judge, Senior Division, Jalgaon.

4. On the other hand, the learned Counsel appearing for the respondent, relying upon the averments in the affidavit in reply, would submit that, out of 8 dates which were fixed in the Family Court, Aurangabad for hearing, on 4 dates the applicant has attended the hearing. Children were not accompanied. Parents are in good health and they are able to travel alongwith the applicants. The respondent is paying handsome amount of Rs.5000/- towards maintenance to the applicants and therefore, the applicant has financial source to travel from Raver to Aurangabad. It is submitted that, the respondent is serving at Gangapur. It is further submitted that, the distance between Raver to Jalgaon is about 100 Kms. and therefore, it is not convenient for the applicant or respondent to attend the proceedings at Jalgaon. Therefore, the Counsel appearing for the respondent, relying upon the affidavit in reply filed, would submit that, this application may be rejected.

5. Upon hearing the Counsel for the parties, I am of the opinion that, this application deserves to be allowed for the following reasons.

Firstly, it is not in dispute that, except the maintenance amount, the applicant has no financial source to travel from Raver to Aurangabad. Secondly, there are two children, aged 6 and 11 years and they are taking education at Raver and therefore, if the proceedings are not transferred from Aurangabad to Jalgaon, there is every possibility that, it will cause great inconvenience to the applicants. Thirdly, as stated by the applicant, the applicant has to look after the parents. The applicant has no real brother to look after the parents. The Supreme Court in the case of Sumita Singh vs. Kumar Sanjay reported in (2001) 10 SCC 41 has held that, in the proceedings filed by the husband, the convenience of the wife should be looked into.

6. Therefore, for the reasons aforesaid, this application is allowed in terms of prayer clause (A), same stands disposed of. The concerned Court to take necessary steps to transfer the proceedings pending before it to the Court of the Civil Judge, Senior Division, Jalgaon, within two weeks from today. Since the proceedings are matrimonial nature, it is desirable that the concerned Court to dispose of the said proceedings, as expeditiously as possible, however, within six months from the first date of hearing to be fixed by the concerned Court. Rule made absolute in the above terms. Civil Revision Application stands disposed of.