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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**12 CIVIL APPLICATION NO. 12614 OF 2017
IN
MISC. CIVIL APPLICATION NO. 119 OF 2017**

MAROTI DATTATRAYA PASANGE
VERSUS
MANISHA MAROTI PASANGE

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Advocate for Applicant : Gaikwad Amol R.
Advocate for Respondent : Mr. A.S. Sawant with Mr. R.C. Misal

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**CORAM : RAVINDRA V. GHUGE, J.
DATED : 18th DECEMBER, 2017.**

PER COURT:-

1. I have heard the learned advocates for the respective sides.
2. This application is filed by the applicant-husband, who is the respondent in Misc. Civil Application No.119/2017. By this application, it is prayed that, the order dated 06.09.2017 passed by this Court be recalled since it was passed on account of the absence of the husband in the Court proceedings and on account of the non-disclosure of material information by the applicant-wife.
3. The order of this Court (Coram: Nitin W. Sambre, J.) dated 06.09.2017 reads as under:

" Respondent though served with notice, none appears for him. The contents in the application are not controverted.

2. Considering the hardship and inconvenience narrated in the application, the application stands allowed in terms of Prayer Clause "B".

3. *The Civil Application stands disposed of in aforesaid terms."*

4. Learned counsel for the applicant submits that, due to an error or oversight on the part of the learned advocate, who was engaged to appear on behalf of the husband in the main proceedings, the Vakalatnama was not filed and he did not notice the proceedings on the board on 06.09.2017. Hence, an ex-parte order was passed by this Court.

5. It is pointed out that, in Hindu Marriage Petition No.257/2015 filed by the husband seeking divorce, the wife had moved an application under Section 24 of the Hindu Marriage Act, 1955 claiming maintenance pendente lite and travel expenses for the proceedings, as she has to travel from Barshi to Parbhani which is said to be a distance of about 200 kms. By order dated 28.06.2016, the trial Court has granted maintenance inclusive of the expenses for traveling to Parbhani. In the entire Misc. Civil Application filed under Section 24 of the Civil Procedure Code before this Court by the wife for seeking transfer of HMP No.257/15 from Parbhani to Barshi, it is not disclosed that, she had moved an application under Section 24 and had obtained maintenance by the order dated 28.06.2016.

6. In my view, this non-disclosure would attract the view taken by this Court in the matters of Kishore Samrite v/s State of Uttar Pradesh, (2013) 2 SCC 398 and Bhaskar Laxman Jadhav.

and others vs. Karamveer Kakasaheb Wagh Education Society and others, (2013) 11 SCC 531.

7. Learned counsel for the wife strenuously submits that, since she is illiterate and may not know the consequences of not briefing the advocate with regard to the order dated 28.06.2016, the non-disclosure may not be deliberate. He, however, submits that, if this Court is inclined to allow this application and restore MCA No. 199/2017, he would take instructions from the wife to make amends for the unintentional non-disclosure.

8. Considering the above, this application is allowed. The order passed by this Court dated 06.09.2017 is recalled and Misc. Civil Application No.119/2017 is posted for a re-hearing on 08.01.2018, before the appropriate learned Bench. Needless to state that, the learned counsel for the wife shall take instructions as suggested above.

(RAVINDRA V. GHUGE, J.)