

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

MISCELLANEOUS CIVIL APPLICATION NO. 119 OF 2017

MANISHA MAROTI PASANGE
VERSUS
MAROTI DATTATRAYA PASANGE

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Advocate for the Applicant : Shri A.R.Savale h/f Shri A.S.Sawant.

Advocate for the Respondent : Shri Amol R. Gaikwad.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 08th March, 2018

Per Court:

1 This application was initially allowed by this Court on 06.09.2017 since none appeared for the Respondent/ husband.

2 Civil Application No.12614/2017 was filed by the Respondent/ husband alleging a fraudulent act on the part of the Applicant/ wife. By order dated 18.12.2017, this Court allowed the said Civil Application, recalled the order dated 06.09.2017 and has posted this Miscellaneous Civil Application for hearing. The said order dated 18.12.2017 reads as under :-

- "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."*

3 I have considered the strenuous submissions of the learned Advocates for the Applicant/ wife and the Respondent/ husband. I have gone through the affidavit in reply filed by the Respondent/ husband. The contentions put forth by the Applicant/ wife have been recorded in the earlier order of this Court dated 18.12.2017, which is reproduced herein above.

4 The Honourable Supreme Court, in the matters of Sumita Singh vs. Kumar Sanjay, AIR 2002 SC 396, Soma Choudhury vs. Gourab Choudhary (2004) 13 SCC 462, Mona Aresh Goel vs. Aresh Satya Goel, AIR 2000 SCW 2652, Anjali Ashok Sadhwani vs. Ashok Kishinchand Sadhwani, AIR 2009 SC 1374 and Vaishali Shridhar Jagtap vs. Shridhar Vishwanath Jagtap, AIR 2016 SC 3584, has held that in such matters of transfer of proceedings, normally convenience of the wife has to be seen.

It is, however, settled that if the husband can indicate reasons due to which it would not be possible for him to frequently leave his place/ area and travel to a place, where the proceedings have been transferred, such inconvenience would also be taken into account and the wife can be compensated by payment of travelling expenses.

5 In the instant case, the Respondent/ husband indicates that he is working with the Zilla Parishad, Parbhani and cannot frequently leave Parbhani and attend the proceedings if they are transferred to Barshi, which is at a distance of about 200 kilometers. So also, it has already come on record that the Applicant/ wife had suppressed the fact that she was receiving the maintenance as well as travelling expenses at the rate of Rs.3000/- per month under the orders of the Court dated 28.06.2016.

6 It is informed by the learned Advocate for the Applicant/ wife, on instructions, that she has received an amount of Rs.24,000/- till today towards maintenance and expenses for travelling to Parbhani.

7 Considering the above, I find that this application does not deserve to be entertained. The same is, therefore, rejected. In the event, HMP No.257/2015 has been transferred to Barshi, the same shall stand restored to the concerned Court at Parbhani.