

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

**REVIEW APPLICATION NO. 242 OF 2017
IN
MISC. CIVIL APPLICATION NO. 145 OF 2017**

Dr Prasanna Ajay Ghadge ... Applicant

Versus

Dr Jagruti Prasanna Ghadge ... Respondent

....

Mr. Amit A. Yadkikar, Advocate for applicant.

Mr. T. G. Gaikwad, Advocate for respondent sole.

....

CORAM : NITIN W. SAMBRE, J.

DATED : 09th APRIL, 2019

PER COURT:-

1 The respondent - non applicant to the review application, moved Miscellaneous Civil Application No. 145 of 2017 pursuant to the provisions of Section 24 of the Code of Civil Procedure, 1908 for transfer of the matrimonial proceedings being Hindu Marriage Petition No. 26 of 2017 initiated under the provisions of Section 13 of the Hindu Marriage Act, 1955 for divorce. The said proceedings were pending on the file of Civil Judge, Senior Division, Satara, of which transfer was sought to the Court of Civil Judge, Senior Division, Ambajogai.

2 This Court, on 14th August, 2017 ordered notice. On 1st September, 2017 the Registry noticed "*await service*". Thereafter, the matter was circulated on 19th September, 2017, on which date the respondent to the said Miscellaneous Civil Application i.e. present review applicant was shown to have been served. As no request for adjournment or the appearance of lawyer for respondent was noticed, this Court allowed the Miscellaneous Civil Application for transfer in terms of prayer clause "B" vide order dated 19th September, 2017 as the contention in the transfer application went uncontroverted. Review of this order dated 19th September, 2017 is sought in this application.

3 The submissions of learned counsel for the review applicant are the applicant who was not keeping good health, contacted a little late in point of time to his lawyer, but in any case before the date fixed by this Court. Accordingly, learned Counsel Shri Amit A. Yadkikar was to represent his interest in the Miscellaneous Civil Application. Learned counsel has filed his personal affidavit demonstrating that he had instructed his registered Clerk to tender Vakalatnama in the Registry on 10th September, 2017, however, same was not tendered diligently by the said registered Clerk. According to him, on 18th September, 2017, he checked the status of the aforesaid application which was categorised as "*await service*". Learned

counsel then would urge that since, the Miscellaneous Civil Application was circulated, same got listed before this Court and this Court accordingly disposed it of in absence of the present applicant. According to him, litigant may not be made to suffer because of his default. He submitted that the law on the said issue viz. default on the part of a lawyer shall not prejudice to the litigant, is well settled and in support, he would place reliance on the judgment of the Hon'ble Apex Court in the case of Rafiq Vs. Munshilal reported in 1981(2) SCC 788.

4 According to him, no prejudice will be caused in case the present review application is allowed and the same be scheduled for re-hearing on its own merits.

5 *Per contra*, learned counsel for respondent-non applicant submits that the order under review was passed by this Court after having noticed that the present applicant-husband, though was served, has chosen not to appear in the matter. He would further urge that the circumstances, as were brought to the notice of this Court, were considered and evaluated in the backdrop of position of law laid down by the Hon'ble Apex Court governing the application of wife preferred under Section 24 of the Code of Civil Procedure.

6 Having appreciated the submissions of learned Counsel for respective parties, what is noticed is, this Court, by order under

review, viz. Passed on 19th September, 2017, has allowed the prayer for transfer of the proceedings after accepting the prayer of the wife. The order speaks of the absence of present applicant and his Counsel though the applicant-original non applicant to the application for Transfer was served. As such, it can be inferred from the record that this Court allowed the application of the present non applicant-wife in view of default in appearance and non controverting the submissions/pleadings in the Transfer Application.

7 Advocate Shri Amit Yadkikar, appearing for the present applicant-husband, filed his own affidavit demonstrating the circumstances in which default was caused in conducting the matter before this Court, which has led to passing of the order under review dated 19th September, 2017. The lawyer, in his personal affidavit, has taken the blame on himself and has urged that for his default, his client may not be made to suffer. Learned Counsel Shri Yadkikar has rightly relied upon the ratio laid down by the Apex Court in the matter of Rafiq Vs. Munshilal (cited *supra*).

8 It is also required to be noted that the matter came up before this Court, as is reflected from the record having been circulated by the original applicant i.e. present non applicant. On the very first date, this Court, having noted that though served, none appears for the respondent, has proceeded to allow the application.

9 As such, there is sufficient prejudice demonstrated by the applicant in case if the order is not reviewed.

10 That being so, a case for review is made out.

11 Review Application stands allowed in terms of prayer clause (A).

The order dated 19th September, 2017, as such, stands recalled. Let the main application, being MCA No.145 of 2017, be placed for decision on its own merits as per the roster assignment.

(NITIN W. SAMBRE)
JUDGE

SMS