

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO.3030 OF 2021
IN
MISC. CIVIL APPLICATION NO.85 OF 2020

Swapnil Chandrakant Kamble .. Applicant

Vs.

Pranali Swapnil Kamble .. Respondent

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Mr. Ramdas A. Shelke for the applicant in I.A. No.3030 of 2021.

Mr. Vaibhav R. Gaikwad for the applicant in MCA No.85 of 2020.

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CORAM : SMT. BHARATI DANGRE, J.

DATED : 25TH OCTOBER, 2021.

P.C:-

1. Interim Application No.3030 of 2021 is taken out seeking recall of the order passed by this court on 23/07/2021 by which, the Misc. Civil Application No.85 of 2020 came to be allowed. By the said order, the proceedings in the form of Hindu Marriage Petition No.27 of 2020 pending on the file of the Civil Judge, Senior Division, Panvel instituted under Section 9 of the Hindu

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Marriage Act came to be transferred to the Civil Judge, Senior Division, Karad at the instance of applicant wife. The transfer was sought on the ground of distance which she would be required to travel to attend the proceedings in the court at Panvel since she is a resident of Karad.

2. My attention was invited to the order, wherein it is recorded that out of the wedlock there is a child born and apart from the distance, the applicant having a child, is put forth as substantial hardship, which weighed with the court in allowing the transfer application. Learned counsel for the applicant-wife has invited my attention to the pleadings set out in Misc. Civil Application No.85 of 2020, particularly in paragraph No.2 of the application, wherein a typographical error has crept in, and the word “no’ being not printed, probably, led the court to consider the submission that there is a child born out of the wedlock. However, since the parties do not dispute the fact that there is no child born out of the wedlock, in my considered opinion, the order dated 23/07/2021 can still sustain on another ground, being the applicant-wife is required to undertake a journey of 600 kilometers to and fro, in attending the proceedings, which necessarily would involve an overnight stay. This was accepted as hardship and, on the basis of which, the application was allowed. I feel that though the order makes a mention of the child being in custody of the applicant, the said reason needs to be ignored and

the fact that the wife is required to undertake the journey of 600 kilometers forms the basis of the transfer of the proceedings being allowed in exercise of power under Section 24 of the CPC. Resultantly, the Misc. Civil Application which has been allowed by the order dated 23/07/2021, does not warrant any recall and by maintaining the order dated 23/07/2021, Interim Application No.3030 of 2021 is disposed of.

[SMT. BHARATI DANGRE, J.]