

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

946 WRIT PETITION NO.7481 OF 2022

RAJENDRA BABURAO KUCHEKAR
VERSUS
SUNANDA RAJENDRA KUCHEKAR

...
Advocate for Petitioner : Shri Chetan T. Jadhav

...
CÖRAM : M.G.SEWLIKAR, J.

DATE : 26th July, 2022

PER COURT:-

1. Heard.
2. The original petitioner in Petition No.A-264 of 2020 filed this petition being aggrieved by the order passed below Exhibit-1 and Exhibit-52.
3. Petitioner had filed petition for divorce before the Family Court, Aurangabad on various grounds. Respondent wife appeared and filed her say vide her written statement and contested the petition.
4. The learned Family Court recorded the evidence of the petitioner. Petitioner's evidence was closed. At that stage, respondent wife filed an application for want of jurisdiction by

the Family Court at Aurangabad. This application was filed at Exhibit-52 contending therein that the Family Court at Aurangabad has no jurisdiction as the husband and wife did not live together at Aurangabad at any time nor the wife is residing at Aurangabad.

5. This application was resisted by the petitioner.

6. After hearing both the parties, the learned Family Court allowed the application Exhibit-52 and directed the return of plaint to the Court having jurisdiction. This order is impugned in this petition.

7. Shri C.T. Jadhav, learned counsel for the petitioner submits that Miscellaneous Civil Application No.259 of 2021 was filed by the wife for transfer of the aforesaid petition from Aurangabad to Pune. That became infructuous because of the order of return of plaint dated 10th June, 2022. He further submits that while returning the plaint, the learned Family Court has not made any observation that on presentation of the plaint, the proceedings shall not start afresh. He submits that if such an order is not passed, the Court in which the proceedings would be instituted, may resort to *de novo* trial. He further submits that the learned

Family Court has observed in his order that the wife is residing at Pune. He had produced several documents to show that the wife is not residing at Pune. Despite this, such an observation is made. He submits that this observation may come in his way in institution of the proceedings.

8. Admittedly, the petitioner is residing at Aurangabad. Learned counsel for the petitioner fairly concedes that the couple never resided together at Aurangabad. In terms of Section 19 of the Hindu Marriage Act, the Court within the jurisdiction of which the marriage was solemnized, or the respondent, at the time of the presentation of the petition, resides or the parties to the marriage last resided together, will have jurisdiction to entertain the petition for divorce. In the case at hand, the learned Family Court was right in observing that it had no jurisdiction to entertain and try the petition for divorce. In this view of the matter, no fault can be found with the order passed by the learned Family Court.

9. The apprehension expressed by the learned counsel for the petitioner has no basis. The petitioner husband can institute the proceedings at the place where the marriage was solemnized or where the parties to the marriage last resided together in terms

of Section 19 of the Hindu Marriage Act. Learned counsel for the petitioner could not point out any provision that while returning the plaint, Court is required to make an observation that the proceedings will not start afresh.

10. For the reasons discussed above, petition is devoid of any substance, hence, it is dismissed.

(M.G.SEWLIKAR)
JUDGE

SPT