

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

CRIMINAL WRIT PETITION NO.1129 OF 2022

SARIKA W/O. NILESH @ SIDHARTH NAPHADE
VERSUS
NILESH @ SIDHARTH SUBHASH NAPHADE

....
Ms. Sunita G. Sonawane, Advocate for the Petitioner
Mr. Dhanraj S. Ingole, Advocate for the Respondent
....

CORAM : SHRIKANT D. KULKARNI, J.

DATE : 26 SEPTEMBER 2022

PER COURT:-

1. Heard finally with the consent of both the sides at admission stage.

2. By invoking writ jurisdiction under Article 227 of the Constitution of India, the petitioner/wife has challenged the order passed by the learned Judge, Family Court-2 at Aurangabad, below exhibit 68 in Criminal M.A. No.15 of 2022.

3. Heard Ms. Sunita Sonawane, learned counsel for the petitioner/wife and Mr. Dhanraj Ingole, learned counsel for the respondent/husband.

4. Ms. Sunita Sonawane, learned counsel for the petitioner/wife invited my attention to the copy of order passed by the learned Judge, Family Court-2, below exhibit 68. She submitted that the petitioner/wife submitted an application before the Judge, Family Court-2 Aurangabad for adjournment on the ground that she has filed transfer petition before the Principal Judge, Family Court, Aurangabad, and the same is sub judice. But, the learned Judge, Family Court-2, Aurangabad was pleased to reject her application and that too by imposing the costs of Rs.500/-. She submitted that the impugned order has caused injustice to the petitioner/wife. She was not at fault. The petitioner was waiting for hearing of transfer application, which was sub judice before the Principal Judge, Family Court, Aurangabad. She, therefore, urged to quash and set aside the impugned order passed by the learned Judge, Family Court-2, Aurangabad dated 10.08.2022.

5. Mr. Ingole, learned counsel for the respondent/husband strongly opposed to allow this petition. He invited my attention to the copy of deposition of the present petitioner/wife. He submitted that examination in chief on affidavit of the present petitioner/wife was filed on

23.06.2022. Her cross-examination was commenced on 20.07.2022 and adjourned due to Court time is over on 20.07.2022. He submitted that there was directions from the High Court to dispose of the proceedings within a span of one year. The petitioner/wife has attempted to prolong the matter by one or other reason. The learned Judge, Family Court-2, Aurangabad by considering all these aspects and time limit fixed by the High Court was pleased to reject the application. There was no defect in the order passed by the learned Judge, Family Court-2, Aurangabad. No interference is called for in the impugned order.

6. I have considered the submissions of both the sides. Perused the impugned order passed by the learned Judge, Family Court-2, Aurangabad as well as other documents and papers annexed with the petition.

7. There is no dispute that the petitioner/wife has moved an application vide Civil M.A. No.17 of 2022 for transfer of the proceedings before the learned Principal Judge, Family Court, Aurangabad. That proceedings was fixed before the learned Principal Judge, Family Court, Aurangabad on 05.09.2022. That's why the petitioner seems to have moved

an application vide exhibit 68 for adjournment. It is true that this Court had directed to the Family Court to decide the proceedings on or before 20.01.2023, and as such, it was expected from both the sides to prosecute the matter without seeking any adjournment. However, the adjournment sought by the present petitioner cannot be said to be mischievous. She sought the adjournment since her petition for transfer of proceedings was sub judice before the Principal Judge, Family Court, Aurangabad. The said proceedings is still sub judice before the Principal Judge, Family Court Aurangabad.

8. Under these circumstances, it was improper on the part of the learned Judge, Family Court-2, Aurangabad to reject the application for adjournment. At the most, the learned Judge, Family Court, Aurangabad could have insisted the petitioner to ask for status of that proceedings and could have given one week time. By granting one week time to the petitioner/wife, no prejudice would have been caused to other side. By this angle, if the order impugned in the petition is examined, certainly the impugned order dated 10.08.2022 passed by the learned Judge, Family Court-2, Aurangabad, below exhibit 68 in Cri. M.A. No. 15 of 2022 is improper and incorrect. It is liable to be quashed and set aside. It is also

necessary to issue direction to the learned Principal Judge, Family Court, Aurangabad to decide the transfer proceedings vide Civil M.A. No.17 of 2022 at the earliest so that further unpleasant events can be avoided.

8. In view of the above, the following order is passed.

ORDER

(i) The writ petition stands allowed in terms of prayer clause (B).

(ii) The learned Principal Judge, Family Court, Aurangabad is requested to decide the transfer proceedings vide Cri. M.A. No.17 of 2022 as early as possible within two months from the receipt of the writ of this Court. Obviously, by giving equal opportunity of hearing to both the sides.

(iii) The Criminal writ petition is accordingly disposed of.

(iv) No order as to costs.

**[SHRIKANT D. KULKARNI]
JUDGE**

S.P Rane