

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

**CRIMINAL REVISION APPLICATION NO.249 OF 2019
WITH APPLN/2931/2019 IN REVN/249/2019**

**SHAIKH SALIM S/O. SHAIKH ISHRAT ALI
VERSUS
BUTUL FATEMA W/O. SK. SALIM AND ANOTHER**

...
Advocate for Applicant : Mr. Shaikh Tarek Mobin H.
...

CORAM : BHARAT P. DESHPANDE, J.

DATED : 19th AUGUST 2022

PER COURT :

This is a Revision Application filed by applicant challenging the order passed by Family Court, Jalna in Petition No.E-221 of 2019, dated 10th June 2019.

2. Heard learned counsel Mr. Shaikh Tarek Mobin H. for applicant.
3. It is main contention of the learned counsel for applicant that initially proceedings were filed before the learned Magistrate at Jalna by respondents under section 125 of the Code of Criminal Procedure for grant of maintenance. The applicant was regularly appearing and contesting the matter before the learned Magistrate. Even evidence was recorded of both the parties before the learned Magistrate. Subsequently, when the matter was kept for arguments as per roznama dated 16th March 2019 by fixing the next

date as 30th March 2019, suddenly, the matter was made over to the Family Court at Jalna and it was re-registered as Petition No. E-221-2019.

4. The applicant was not informed and no notice was issued by the Family Court to the applicant about the date for arguments. Therefore, applicant had no opportunity to argue the matter, which resulted in causing injustice and similarly there is violation of principles of natural justice.

5. Learned counsel has invited attention of this court to roznama issued by Family Court, Jalna. It shows that initially the matter was registered at Judicial Magistrate at Jalna vide Criminal Misc. Application No.457 of 2015. The applicant was appearing before the Magistrate and contesting the matter. The said matter continued with the Magistrate till 16th March 2019, when the present applicant through his Advocate remained present. The matter was adjourned for arguments on 30th March 2019 by the learned Magistrate. Thereafter, the said matter was transferred to Family Court at Jalna and re-registered as Petition No.E-221 of 2019.

6. The roznama produced on record from 7th May 2019 of the Family Court, Jalna, nowhere shows that notice was issued to the present applicant or his counsel, so as to give opportunity to argue the matter.

7. It clearly shows that, after the matter was made over to the Family Court at Jalna, the applicant was not informed either through his

counsel or by issuing any separate notice to him to appear and argue the matter. It was incumbent upon the learned Family Court at Jalna to issue notice to the applicant informing him that the matter was made over to Family Court at Jalna and when it was found that the applicant and his counsel remained absent from 7th May 2019 till the matter was disposed of on 10th June 2019.

8. It is born out of record that there is violation of principles of natural justice as the applicant was not informed by issuing notice of transfer of matter from the learned Chief Judicial Magistrate, Jalna to the learned Family Court at Jalna.

9. There is no endorsement in the roznama of the learned Magistrate at Jalna on 16th March 2019 intimating that the matter is being transferred to the Family Court at Jalna. Though, the matter was fixed from 30th March 2019 as per roznama dated 16th March 2019, it was not taken up by the learned Magistrate on that date and endorsement in the roznama dated 16th March 2019 shows that the next date is latter on written in ink as 07th May 2019.

10. The date which was given earlier as 30th March 2019 was changed to 07th May 2019, but there is no endorsement that such change of the date was intimated to both the parties and specifically to the applicant including the fact that the matter is being transferred to the Family Court at Jalna.

11. On this ground alone, it is clear that the applicant was prevented from arguing the matter on merits before the learned Family Court and thus the order impugned in the present Revision needs to be quashed and set aside. The matter is required to be remanded to the learned Family Court with directions to give opportunity to the applicant to argue the said matter and thereafter to decide it afresh.

12. Learned counsel for applicant placed reliance in the case of *Ratilal S/o Jivanbhai Lalji Vs. 1(a) Kuvarben wd/o Chabildas Patel and Ors.*, reported in *2009 (1) ALL MR 654*, wherein this Court has observed that non-communication of transfer of matters from one Court to another and non-communication from counsel is sufficient ground to condone the delay and set aside ex-parte decree. The said proposition is squarely applicable to the fact of the matter. Hence, Revision Application needs to be allowed on its limited ground. Hence the order :

ORDER

- (i) The Revision Application stands partly allowed.
- (ii) The impugned order dated 10th June 2019 passed by Family Court, Jalna in Petition No. E-221 of 2019 is hereby quashed and set aside.
- (iii) The matter is remanded to the file of learned Family Court at Jalna with directions to give an opportunity to the

applicant to argue the matter on merit and thereafter decide it afresh.

- (iv) Parties are directed to remain present before the learned Family Court at Jalna on 28th September 2022.
- (v) The Revision Application stands disposed of accordingly.
- (vi) In view of disposal of Revision Application, Criminal Application stands disposed of.

(BHARAT P. DESHPANDE, J.)