

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**REVIEW PETITION NO.3 OF 2022
IN
MISC. CIVIL APPLICATION NO.189 OF 2021**

Shri. Satish Shivaji Shinde & Ors.	..Petitioners
Versus	
Sau. Ashwini Satish Shinde	..Respondent

Ms. Pallavi N. Dabholkar, for the Petitioners.
Mr. P. D. Dalvi for the Respondent

CORAM : NITIN W. SAMBRE, J.

DATED : 7th OCTOBER, 2022

P.C.:

1. Heard.
2. By this application, recall/review of order dated 28/03/2022 is sought, which was passed in MCA/189/2021. The non-applicant, wife has moved MCA/189/2021 seeking following prayer:-

(a) Be pleased to transfer the Marriage Petition No. 2416 of 2019 filed by the Respondent before the Bandra Family Court at Mumbai to the Civil Court Senior Division at Shivaji Nagar, Pune for the reasons and circumstances mentioned hereinabove.

(b) During the pendency and final disposal of this Petition, be pleased grant stay to the further proceeding of the Marriage Petition No. 2416 of 2019 pending before the Ld. Family Court at Bandra at Mumbai filed by the Respondent for the reasons and circumstances mentioned hereinabove.

3. This Court has ordered notice to the present petitioner who was non-applicant in the transfer application. Despite service by notice, he has chosen not to appear in the matter.

4. As such, this Court after having heard the advocate for the applicant-wife in the transfer application, has recorded the findings that the case for ordering transfer as prayed was made out.

5. For passing such order, the submissions which persuaded this Court to form such an opinion i.e. (a) wife is custodian of the minor child who was born on 01/04/2013 & (b) that she is not getting any maintenance.

6. In the review petition, my attention is invited to the pleadings in the paragraph no. 8 of the transfer application reads thus:-

8. The Petitioner states that the Petitioner herein also filed a Criminal Miscellaneous Application bearing No. 1140 of 2019 before the Judicial Magistrate First Class Court Bhore, Dist - Pune on 06.08.2019. The Petitioner states that the said Petition is filed under section 12, 17, 18, 19, 20, 22 and 23 of Protection of Women From Domestic Violence Act, 2005. Wherein the Petitioner herein has sought maintenance a sum of Rs. 25,000/- per month and Also Sought Custody of Child Suyesh from Respondent No. 1 wherein Rest of the Respondent No.2 to 4 is include as opposite parties No. 2 to 4. The same is pending before the Ld. Judicial magistrate First Class Court Bhore, District - Pune. The copy of the Criminal Miscellaneous Application bearing No. 140 of 2019

filed by the Petitioner is annexed hereto and marked as Exhibit "C".

7. As such, Ms Dabholkar, learned counsel for the review petitioners would urge that in the pending DV proceedings not only the maintenance of Rs.25,000/- per month is claimed, but also custody of child-Suyash was sought from the applicant-wife. As such, according to her, very submissions made by learned counsel for the applicant-wife are contrary to the records.

8. Mr. Dalvi, learned counsel for the non-applicant-wife does not dispute the aforesaid position. However, he urges that it was a mistake on the part of the counsel for the non-applicant-wife to make submissions contrary to the records.

9. I have considered the said submissions.

10. As the fact that the custody of child is with the review petitioner i.e husband and he is already paying maintenance to the non-applicant-wife, in my opinion the order of which the review is sought i.e. 28/03/2022 is contrary to the pleadings on record and as such, needs to be recalled. That being so, the order dated 28/03/2002 ordering transfer of the proceedings in terms of prayer clause (a) therein stands recalled.

11. For the aforesaid reasons, having noticed that the

submissions contrary to the pleadings are made, cost of Rs.25,000/- is saddled on the non-applicant-wife, to be deposited in the DV proceedings to which the review petitioner-husband is entitled to withdraw. The cost be deposited in any case within a period of four weeks from today.

12. If the cost is not deposited, the same be adjusted against the claim of the wife towards maintenance.

13. The application for transfer be posted for consideration before Regular Court on 5th January, 2023.

14. Both the Courts below as such, are directed to proceed with the matter.

ANANT
KRISHNA
NAIK

Digitally signed
by ANANT
KRISHNA NAIK
Date: 2022.10.14
10:15:59 +0530

(NITIN W. SAMBRE, J.)