

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.42 OF 2023**

Gaurav Balwant Lawate	...	Appellant
versus		
Kiran Gaurav Lawate	...	Respondent

Mr. Ranjit Shinde for Appellant.
None for Respondent.

CORAM: N.J.JAMADAR, J.

DATE : 26 APRIL 2023

P.C.

1. Heard the learned Counsel for the Appellant.
2. The challenge in this Appeal is to the judgment and order dated 24 November 2022 passed by the learned District Judge, Vadgaon – Maval, Pune, in Regular Civil Appeal No.214 of 2022 whereby the learned District Judge was persuaded to allow the Appeal and set aside the judgment and decree dated 20 August 2022 passed in Marriage Petition No.112 of 2022 as well as the order dated 11 July 2022 on an Application (Exhibit 16), to handover the custody of the child to the Respondent (Appellant herein), and remand the Marriage Petition No.112 of 2022 to the Court of Civil Judge, Sr. Division, Vadgaon-Maval for taking action in conformity with an order passed by this Court dated 12 July 2021 in Misc. Petition No.372 of 2019.
3. Marriage of the Appellant was solemnized with the Respondent on 25

May 2017. They were blessed with a son on 16 December 2018. In the wake of the martial discord, the Respondent filed an application No.376 of 2019 before the Judicial Magistrate, First Class, Sangli under the provisions of Protection of Women from Domestic Violence Act, 2005. The Appellant filed a Petition for dissolution of marriage being Marriage Petition No.112 of 2022 (Old Marriage Petition No.1259 of 2019) in the Court of Civil Judge, Sr. Division, Vadgaon-Maval. The Appellant had also filed an application seeking custody of the son, during the pendency of the divorce petition. The said application came to be allowed.

4. In the intervening period, the Respondent preferred an application being Misc. Civil Application No.372 of 2019 in this Court seeking transfer of the Marriage Petition No.112 of 2022 from the Court of Civil Judge, Sr. Division, Vadgaon-Maval to the Court of Civil Judge, Sr. Division, Sangli. By an order dated 12 July 2021 this Court allowed the said application and ordered the transfer of Marriage Petition No.112 of 2022 pending on the file of Civil Judge, Sr. Division, Vadgaon-Maval to the Court of Civil Judge, Sr. Division, Sangli. However, the said Petition continued to remain on the file of Civil Judge, Sr. Division, Vadgaon-Maval and by a judgment and decree dated 20 August 2022, the said marriage Petition was allowed and the marriage between the Appellant and Respondent was dissolved by a decree of divorce under Section 13(1)(i-a) of the Hindu Marriage Act, 1955.

5. Being aggrieved, the Respondent preferred Regular Civil Appeal No.214

of 2022. By the impugned judgment and order, noting the effect of the order passed by this Court dated 12 July 2021 in Misc. Civil Application No.372 of 2019 ordering the transfer of the proceedings to the Court of Civil Judge, Sr. Division, Sangli, the learned District Judge held that the judgment and decree dated 20 August 2022 passed by the learned Civil Judge, Sr. Division, Vadgaon-Maval was without jurisdiction. Hence, the said judgment and decree was set aside and Marriage Petition No.112 of 2022 was remitted back to the Court of Civil Judge, Sr. Division, Vadgaon-Maval for further action in conformity with the decision of this Court.

6. The learned Counsel for the Appellant would urge that it was for the Respondent to ensure that Marriage Petition No.112 of 2022 was transferred to the Court of Civil Judge, Sr. Division, Sangli. As the Appellant as well as the Court at Vadgaon-Maval were unaware of the order passed by this Court transferring Marriage Petition No.112 of 2022 to Civil Judge, Sr. Division, Sangli, the learned District Judge could not have held that the judgment and decree in Marriage Petition No.112 of 2022 was without jurisdiction.

7. I find it difficult to accede to the aforesaid submissions. It may not be necessary to delve into the abstract question of inherent lack of jurisdiction. The spirit of the order passed by this Court on 12 July 2021 in Misc. Civil Application No.372 of 2019 is required to be kept in view. Transfer of the proceedings was ordered with a view that it would relieve the Respondent of the hardship she otherwise would

have faced in defending the Marriage Petition in the Court of Vadgaon-Maval.

8. Likewise, the question as to who was at fault in not bringing the order passed by this Court to the notice of the Civil Judge, Sr. Division at Vadgaon-Maval need not detain the Court. In fact, the learned District Judge noted that on 5 May 2020, the Respondent had filed a pursis to apprise the Court at Vadgaon-Maval that she had filed Misc. Civil Application No.372 of 2019 before this Court seeking transfer of the Marriage Petition from the said Court.

9. In normal circumstances, a writ pursuant to the order passed by this Court dated 12 July 2021 ought to have been issued to both transferee and transferor Courts. Yet the proceedings in Marriage Petition No.112 of 2022 continued before the Court at Vadgaon-Maval i.e. the transferee Court. At any rate, the issue is required to be appreciated through the prism of prejudice. The Respondent did not participate in the proceedings in Marriage Petition No.112 of 2022, apparently for the reason that this Court had ordered transfer of the said proceedings.

10. In the circumstances, the learned District Judge was justified in setting aside the judgment and decree passed in the Marriage Petition including the order to handover the custody of the child to the Appellant. Hence, the appeal does not deserve to be entertained.

11. Since the martial discord is likely to take a toll on both the Appellant and Respondent and their son as well, the Court shall make an endeavour to decide the

proceedings between the parties expeditiously.

12. The Appeal accordingly stands dismissed.

(N.J.JAMADAR, J.)