



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

MISC.CIVIL APPLICATION NO. 82 OF 2018

Rahul Ratnakar Gaikwad

VERSUS

Asawari Rahul Gaikwad

...

Mr. Y. S. Choudhari, Advocate for Applicant

Mr. A. R. Vaidya, Advocate for Respondents

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CORAM : R.M. JOSHI, J

DATE : JULY 11, 2024

PER COURT :

1. This application is filed by husband for transfer of Hindu Marriage Petition No. 180/2015 filed by Respondent wife from Akola to Sangamner.

2. Present application is pending since year 2018. It is the contention of the Applicant that HMP No. 270/2015 filed by him against Respondent is already allowed and against the said judgment an Appeal is preferred by wife which is pending before District Judge at Sangamner. He further submits that there was an attempt on the life of the Applicant at the instance of Respondent at matrimonial home and that there is danger to his life if he is called upon to attend proceedings before Court at Akola. Thus, it is his

contention that the proceedings of HMP No. 180/2015 be transferred to Sangamner.

3. Learned Counsel for Respondent, on the other hand, opposed the said contention essentially on the ground that the Applicant herein has not complied with order dated 27.09.2016 passed in HMP No. 180/2015 whereby maintenance was directed to be paid to the Respondent. According to him, on this count alone application deserves to be rejected. It is also submitted that in Appeal, presence of the Respondent is not necessary on each date of hearing, which would not be so in case of trial in HMP No. 180/2015.

Learned Counsel for Applicant is not able to controvert the statement made on behalf of Respondent about non payment of maintenance to Respondent/Wife.

4. This Court has made an attempt to find out the possibility of any neutral place which is convenient to both sides. Both sides are not agreeable to the same. Hence, this application is decided on merits.

5. It is sought to be argued that the application made by the wife for transfer of HMP No. 270/2015 filed

by husband to Akola was rejected by this Court, Bench at Nagpur, in MCA No. 294/2015 by order dated 18.07.2017. Perusal of the said order however indicates that at the relevant time criminal proceeding was pending at Sangamner and hence, it was held by this Court that for the purpose of attending the said proceedings in any case wife is required to go to Sangamner and hence, no inconvenience will cause to her. Merely because application filed by Respondent is rejected, it would not become ground to allow present application.

6. In order to transfer proceedings from the Court of appropriate jurisdiction, there has to be an exceptional case being made out, which is absent in instant case. The situation is also now changed with decision of HMP No. 270/2015 filed by husband. An appeal is filed against order passed in HMP No. 270/2015 wherein personal presence of the Respondent would not be necessary.

7. One more aspect of non compliance of the order passed of maintenance is concerned, there is nothing on record to indicate that the order dated 27.09.2015

granting maintenance to wife passed in HMP No. 180/2015 is taken exception to. For want of rebuttal, this Court finds substance in the contention of the learned Counsel for Respondent that for non-compliance of order, Applicant is not entitled to seek discretionary relief.

8. Having regard to the aforestated facts, no case is made out for transfer of proceedings from the Court of competent jurisdiction to any another Court. Hence, application stands dismissed.

(R. M. JOSHI, J.)

Malani