



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

910 WRIT PETITION NO. 272 OF 2024

Digambar Murlidhar Murlidhar Chate

VERSUS

Dilip Shivajirao Deshpande And Another

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Advocate for the Petitioner : Mr. Thombre S.S.

None present for Respondents

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CORAM : R. M. JOSHI, J.

Dated : July 02, 2024

PER COURT :-

1. None present for the respondents in spite of service of notice of this Court. This indicates that respondents are not interested in opposing the petition.

2. Learned Counsel for petitioner submits that learned Principal District Judge, Beed has committed error in transferring Regular Civil Appeal No.280/2023 from pending on the file of District Judge, Kaij to District Judge-2, Beed without taking into consideration the fact that the appeal is filed by the original defendants is through their power of attorney Shardul Dilip Deshpande who himself is an Advocate. It is submitted that the Principal District Judge fell into error in transferring the proceedings from the Court of proper jurisdiction on the ground that the appellant No.2 suffers from old age diseases.

3. The facts as brought to the notice of this Court indicates that Regular Civil suit No.24/2002 filed by the petitioner before Civil Judge,

Junior Division, Kaij came to be decreed by Judgment dated 02/01/2023. Against the said decree, Regular Civil Appeal No.280/2023 was filed initially before the District Judge, Ambejogai. Pertinently this appeal is filed not by the original defendants themselves but the same is filed through their constituted power of attorney. After District Court started functioning at Kaij, this appeal came to be transferred to Kaij. It is thereafter an application is filed before the Principal District Judge, Beed seeking transfer of the said proceedings from the Court at Kaij to Beed. The reason for transfer is the old age ailments of one of the appellants.

4. Any proceeding pending before Court of Competent Jurisdiction cannot be transferred unless exceptional case is made out. Present case is not the one where transfer is sought owing of any grievance against Judge. Even in any other case, party seeking transfer must prove that he would be denied fair opportunity to prosecute / defend such case. In the instant case, learned Principal District Judge could have been justified in transferring the proceeding pending before the Court at Kaij if party was required to remain present before the Court and unable to do so. Here in this case appeal is arising out of the Judgment and decree passed by the Trial Court and for all practical

purposes physical presence of appellants is not necessary, more particularly when the appeal is filed through constituted power of attorney who is a practicing Advocate. The learned Principal District Judge has not taken into consideration the said vital aspects relevant for the decision of the application. Having regard to the aforestated facts, the order of transfer of Regular Civil Appeal No.280/2023 from the Court of proper jurisdiction is not justified.

5. As a result of above discussion, order dated 29/11/2023 stands set aside. Regular Civil Appeal No.280/2023 is restored back to the file of District Court, Kaij. Parties to appear before the Court at Kaij on the next date of hearing.

(R. M. JOSHI, J.)

vj gawade/-.