

Ajay

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

WRIT PETITION NO. 9355 OF 2023

Tanaee Rohit Manglekar	.. Petitioner
Versus	
Rohit Dattatray Mangalekar	.. Respondent

-
- Mr. Vinaykumar Khatu, Advocate for Petitioner.
-

CORAM : MILIND N. JADHAV, J.

DATE : MARCH 07, 2024.

P.C.:

- 1.** Heard Mr. Khatu, learned Advocate for Petitioner.
- 2.** Present Writ Petition takes exception to the order dated 05.04.2023 passed in Application below Exhibit “15” in Petition No.225 of 2021 which is at Exhibit “C” - page No.21 of the Writ Petition. Application below Exhibit “15” was filed alongwith supporting Affidavit below Exhibit “16” for setting aside the “No WS” order dated 28.06.2022. Application was filed on 03.09.2022 by Advocate Mr. Jayvardhan Chaughule.
- 3.** Mr. Khatu, learned Advocate for the Petitioner – wife before the Family Court would submit that Marriage Petition No.225 of 2021 was filed on 10.12.2021 by the Respondent – husband. He would submit that on 08.12.2022, Petitioner appeared before the Family

Court alongwith her Advocate Ms. Rashmi Jadhav and vakalatanama of the said Advocate was filed. He would submit that due to the third covid wave, Advocate for the Petitioner lost her husband and therefore since that Advocate was residing in Panvel, she showed her reluctant to travel to Sangli to represent the Petitioner in the Marriage Petition. In respect of the fact that the said Advocate resided in Panvel, the learned Advocate points out that the same Advocate represents the Petitioner in the DV case filed by Respondent in the Panvel Court.

4. He would next submit that due to the aforesaid, learned Advocate as also the Petitioner was unable to travel to Sangli to attend hearing in the Marriage Petition on 09.03.2022, 04.04.2022 and 12.05.2022 and more specifically so due to the third covid wave. He would inform the Court that the Petitioner is a Doctor and during that time she was engaged and was undertaking covid work.

5. In view of the above circumstances, the order dated 28.06.2022 came to be passed. On the Application filed for setting aside the order dated 03.09.2022 through a different Advocate, the learned Trial Court has incidentally held that the Respondent – wife was bound to file her written statement, but did not remain present nor they filed any adjournment Application and therefore the “No WS” order came to be passed. The Court further held that the delay has not been properly explained in the Application dated 03.09.2022. I have

perused the Application filed below Exhibit “15” which is at page No.19 of the Writ Petition.

6. After going through the said Application as also the pleadings in the present case, I am of the opinion that the delay has been stated in the Application which ought to have been considered by the Court. Rejecting the Application and non-suiting the Respondent who is infact a resident of Panvel is quite harsh in the facts of the present case.

7. In that view of the matter, the impugned order dated 05.04.2023 is not sustainable and the same is quashed and set aside. Application below Exhibit “15” stands allowed. The delay in filing the Application stands condoned. Written statement is directed to be filed within a period of two weeks from today before the learned Trial Court. The learned Trial Court thereafter is directed to proceed further in the Marriage Petition strictly in accordance with law.

8. With the above directions, Writ Petition is allowed and disposed.

[MILIND N. JADHAV, J.]