

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9279 OF 2024

Shweta Ajay Patil

.. Petitioner

Versus

Ajay Appasaheb Patil

.. Respondent

-
- Mr. Shailesh D. Chavan a/w Mr. Hrishikesh Avhad & Mr. Akshay Mane for Petitioner

.....
CORAM : MILIND N. JADHAV, J.

DATE : JULY 09, 2024

P. C.:

1. Heard Mr. Chavan, learned Advocate for Petitioner.
2. At the outset, Mr. Chavan would submit that service has already been effected on the Respondent. Proof of service is taken on record. Tracking report has been placed on record which is marked as "X" for identification. It shows that Respondent has been served with copy of the Writ Petition. This Petition was heard on 25.06.2024 and direction to serve the Respondent was given by this Court. Respondent is not present.
3. Perused the impugned order dated 25.04.2024 passed by the learned Trial Court while determining the Application filed below Exh. 1 on behalf the Applicant wife. It was contended by Applicant that due to the exigencies mentioned by her in her Application, Marriage Petition No. 452/2023 be transferred from the Court of Civil Judge

Senior Division, Wai to the Civil Court at Satara. Learned Court holds that the Marriage Petition can undoubtedly be transferred to the Family Court, Satara but such powers are not delegated to the Principal District Judge.

4. When I heard this case on 25.06.2024, following order was passed:-

- "1. Not on board. Mentioned. Taken on board.
2. Perused the praecipe dated 25.06.2024.
3. By virtue of the impugned order dated 25.04.2024 which is appended at Exh. F; page Nos. 82-84 of the Petition, the Application seeking transfer of Marriage Petition No. 452/2023 pending before the Civil learned Civil Judge Senior Division, Wai to Civil Court, Satara came to be rejected.
4. It is stated that the distance between Satara and Wai is about 35 kms and it is difficult for the Petitioner to travel there due to the medical condition of one of her son. She has twin sons who are 2.5 years old and one of them is suffering from a medical ailment. The reason which is stated in paragraph No. 8 that the District Judge does not have jurisdiction to decide the transfer application filed by the Petitioner is the only reason as can be understood after reading the contents of paragraph Nos. 8 and 9 of the impugned order. It is also seen that there is availability of Family Court at Satara.
5. An arguable case is made out by Mr. Chavan for issuance of notice and for stay to the impugned order dated 25.05.2024. Hence, the order dated 25.04.2024 is stayed.
6. Issue notice to the Respondent husband made returnable on 09.07.2024. Humdast permitted. In addition to Court's notice, Petitioner is directed to serve copy of the Petition along with copy of this order on the Respondent and inform him about the next date of hearing by any permissible mode of service and file appropriate affidavit of service with tangible proof thereof on or before the next date. After receiving the notice, Respondent to file affidavit-in-reply on or before the next date, if so desired with an advance copy to the Advocate for Petitioner.
7. Respondent is directed to remain present either himself or through his Advocate on the next adjourned date. It is made clear that if Respondent remains absent despite service on the next adjourned date, this Writ Petition shall be heard and disposed of at the stage of admission in the absence of the Respondent.
8. I am informed that the date before the learned Civil Court is on 28.06.2024. Learned Civil Court at Wai is directed to defer the proceedings before it till determination of the present Writ Petition.
9. Stand over to **9th July, 2024 at 2:30 p.m.**"

5. In view of the reasons stated in paragraph No. 4 of the above order, the grievance of the Petitioner deserves to be redressed and in that view of the matter and the reasons given by the Petitioner, it is directed that Marriage Petition No. 452/2023 which is pending as on date before the Civil Judge Senior Division, Wai be transferred to the Family Court at Satara.

6. The Civil Judge Senior Division, Wai shall act on a server copy of this order and transfer the proceedings of Marriage Petition No. 452/2023 to the Family Court at Satara. Family Court at Satara shall act on a server copy of this order and register the Marriage Petition accordingly. The Family Court at Satara thereafter shall issue necessary process to both the parties and proceed with the Marriage Petition strictly in accordance with law.

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

[MILIND N. JADHAV, J.]

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RAVINDRA MOHAN AMBERKAR
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