

Ajay

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

MISC. CIVIL APPLICATION NO. 130 OF 2024

Diksha Bimbisar Gaikwad

.. Applicant

Versus

Bimbisar Baburao Gaikwad

.. Respondent

-
- Mr. Onkar Arun Mane, Advocate for Applicant.
 - None for Respondent.
-

CORAM : MILIND N. JADHAV, J.

DATE : SEPTEMBER 25, 2024.

P.C.:

1. Heard Mr. Mane, learned Advocate for Applicant. Respondent has been served by the Advocate for Applicant through whatsapp. Affidavit of service dated 23.09.2024 is filed before me.

2. The notice is issued through the Court on 28.03.2024. Thereafter process has been issued through the Court on 19.04.2024 and the remark shows service is awaited. Considering that Respondent has been served through a permissible mode of service and service Affidavit dated 23.09.2024 is filed by the Advocate for Applicant – wife, the same is taken on record. The hearing of the MCA cannot be protracted any further despite the order dated 06.08.2024 since Respondent is not present before the Court when the matter is called out and he has been served. Hence, MCA is taken up for hearing.

3. MCA seeks transfer of Marriage Petition A.No.2232 of 2022 filed by Respondent in the Family Court at Pune to the Family Court at Aurangabad where Applicant is residing alongwith her parents.

4. Apart from the proximity of distance between the two destinations, Applicant would undoubtedly encounter hardship which is clearly evident. That apart, Applicant has filed DV Act case in the Court of Judicial Magistrate First Class at Aurangabad as also complaint under Section 498-A and other Sections of the Indian Penal Code,1860 and the Dowry Prohibition Act, 1961 in the appropriate Court / Forum in Aurangabad itself.

5. In view of the aforesaid twin reasons, MCA deserves to be allowed as the Applicant will undoubtedly encounter severe hardship and difficulty. It is pleaded that the Respondent is working as Data Analyst in a private company and his salary is approximately Rs.90,000/- per month and he also owns a flat in Aurangabad. The details of such averments are stated in paragraph No.9 of the MCA. However considering the proximity of distance and difficulty encountered by the Applicant – wife, the MCA stands allowed in terms of prayer clause ‘a’ which reads thus:-

“a) This Honourable Court be pleased to issue Order under Section 24 of the Civil Procedure Code for Transfer of the Divorce Proceeding bearing Petition A/2232/2022 pending before the Hon’ble Family Court pune at pune to Hon’ble Family Court Aurangabad at Aurangabad.”

6. Considering that Respondent is working in a Private Company, he shall be permitted by the Family Court at Aurangabad to appear on VC and if any such application made by him to the concerned Family Court, Aurangabad which shall allow the same in accordance with law to dispense his presence so that his employment and job shall not be affected.

7. Mr. Mane, learned Advocate informs the Court that in the Marriage Petition, an *ex parte* order dated 30.10.2023 has been passed and the Court has directed the Marriage Petition to proceed *ex parte* against the Applicant - wife. I have seen the copy of the order dated 30.10.2023. The transfer of the Marriage Petition would be fruitless if this order is not set aside. Undoubtedly, an Application can always be made by the Applicant – wife to the concerned Transferee Court for setting aside of this order, but in order to ameliorate and redress the grievances of the Applicant – wife, it would be in the interest of justice if this order is set aside.

8. Hence, the order dated 30.10.2023 stands quashed and set aside and the learned Family Court, Aurangabad shall permit the wife to file her written statement within the time that shall be stipulated by the Court on presentation of a server copy of this order before the said Court.

9. All contentions of both parties are expressly kept open.

10. With the above directions, MCA stands allowed and disposed.

[MILIND N. JADHAV, J.]

Ajay

AJAY
TRAMBAK
UGALMUGALE

Digitally signed
by AJAY
TRAMBAK
UGALMUGALE
Date: 2024.09.26
10:20:12 +0530