

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO. 134 OF 2024

Sanjyot Nitin Telharkar

.. Applicant

Versus

The State of Maharashtra & Anr.

.. Respondents

.....

- Mr. Amey S. Ajgaonkar for Applicant
- Mr. Ashok S. Gawai, AGP for State
- Mr. Jayesh Gawde for Respondent No. 2

.....

CORAM : MILIND N. JADHAV, J.

DATE : SEPTEMBER 25, 2024

JUDGMENT:

1. Heard Mr. Ajgaonkar, learned Advocate for Applicant, Mr. Gawde, learned Advocate for Respondent No. 2 and Mr. Gawai, learned AGP for State.

2. At the outset, Mr. Ajgaonkar would draw my attention to prayer clause (B) of the Misc. Civil Application (MCA). He would submit that he has been appointed through Legal Aid to espouse the cause of Applicant - wife. He would submit that Applicant is residing in Kamothe near Panvel and therefore the correct jurisdictional Court for seeking transfer of Marriage Petition would be the Court of Civil Judge Senior Division at Panvel. He would submit that inadvertently when the MCA has been filed, in prayer clause (B) transfer is sought to the Family Court at Panvel. However, there is no Family Court at Panvel but there is Family Court at Belapur which is jurisdictionally a

different Court. In that view of the matter, he seeks leave to amend the prayer clause (B) to amend the Application in that respect. Leave as prayed for is granted. Amendment is permitted to be carried out forthwith in the Court itself. Re-verification stands dispensed with in that view of the matter.

3. Applicant is the wife who seeks transfer of Marriage Petition No. 71/2016 filed by Respondent - husband under Section 9 of the Hindu Marriage Act before the Civil Judge Senior Division, Vasai, Palghar to the Civil Judge Senior Division, Panvel.

4. Applicant is residing in Kamote which is in Panvel. Respondent is a resident of Vasai. Apart from proximity of distance between the two destinations, it is seen that if the Applicant who is 53 years old and is required to undertake the travel from Panvel to Vasai after taking break journey even if she has to travel by train or by road, she would encounter immense hardship. This Court is aware of the fact of travelling by local train in the city of Mumbai to travel the aforesaid distance between Panvel and Vasai, as also by road. Considering the difficulty that would be encountered by the Applicant and the imprimatur of the Supreme Court where convenience of the Applicant - wife will have to be looked into by the Court while considering such an Application for transfer, the hardship of the Applicant - wife is evident. It is stated in the Petition that there is an

outstanding amount of Rs. 2.28 lacs due and payable to the Applicant. I am informed that in the interregnum certain cheques were paid but some of them were dishonoured. Be that as it may, it appears there is outstanding arrears. This also adds to the difficulty and hardship of the Applicant - wife. That apart medical exigency expressed by Applicant in paragraph No. 15 is also seen and considered by the Court. Further Applicant wife has filed D.V. Act proceedings which is pending in the Court of J.M.F.C. Panvel.

5. *PER CONTRA*, Mr. Gawde, learned Advocate for Respondent No. 2 - husband has drawn my attention to the affidavit in reply dated 14.08.2024 and would contend that all objections against allowing the MCA are stated therein. He would submit that mother of Respondent is about 80 years old and for the last several years suffering from paralysis and he is required to take care of her daily needs. He would submit that mother of Respondent is also having hearing deficiency which requires Respondent to take care of her and in the event if Marriage Petition is transferred out of Vasai, it would be difficult for Respondent to attend the matter in such a precarious condition. These are the only principal grounds of objection that can be seen from the affidavit in reply. All other grounds in the affidavit in reply are *qua* merits of the case between the parties relating to their marriage.

6. After hearing Mr. Ajgaonkar and Mr. Gawai, learned Advocates appearing for the respective parties, I am of the clear opinion that the hardship that would be encountered by the Applicant - wife in this case would far outweigh the submissions made on behalf of Respondent. Whenever Application for transfer of the proceedings is required to be considered, the imprimatur of the Supreme Court in the case of **N.C.V Aishwarya Vs. A.S. Saravana Karthik Sha**¹ and more specifically paragraph No. 9 thereof requires the Court to consider an array of factors impinging upon the hardship to the wife and more specifically in the prevailing socio-economic paradigm in the Indian Society, it is the wife's convenience which must be looked at while considering such a transfer. Considering that wife will have to undertake the journey between the two destinations to attend the proceedings at Vasai and back, it would undoubtedly expose her to severe hardship unlike that would be encountered by the Respondent - husband if Respondent is required to travel to Panvel. Respondent has also derelicted in not adhering to the orders passed by the Court and is admittedly in arrears of a substantial amount which adds to the hardship of the Applicant. Though that may not be a reason to be considered for transfer but still this non-payment of maintenance encounters severe difficulty to the wife who has been granted the said amount by virtue of orders passed by the Court. That apart,

¹ AIR 2022 SC 4318

considering that the wife has also filed D.V. Act proceedings before the Court of JMFC, Panvel, it would be inappropriate to consider the request made by Respondent as stated in his affidavit in reply. In that view of the matter, I am not inclined to accede to the request made by Respondent and therefore present MCA deserves to be allowed in terms of prayer clause (B) which reads thus:-

"(B) To pass an order or direction to stay and transfer the proceedings arising out of Marriage Petition No. 71/2016, Senior Division, Vasai. Mr. Nitin Telhalkar Vs. Mrs. Sanjyot Telhalkar filed by the Respondent herein under Section 9 of the Hindu Marriage Act, 1955 pending before the Hon'ble Principal Civil Judge Senior Division Court at Vasai, Palghar to be transferred to Civil Judge Senior Division at Panvel, Maharashtra."

7. Both the concerned Courts shall take cognizance of a server copy of this order and shall not insist on a certified copy of the order and act accordingly for transfer and re-registration of the proceedings as expeditiously as possible and in any event within a period of two weeks from the date of presentation of a server copy of this order to the Courts by the Advocates for the parties.

8. Considering that the Marriage Petition is of the year 2016 and eight years have been passed, learned Civil Judge Senior Division at Panvel is directed by this Court to expedite hearing of the Marriage Petition.

9. During the course of arguments, Mr. Gawde would submit that both the parties are at advanced age rather have crossed

their middle age, hence it would be prudent if the parties are referred for mediation since there is a realistic chance and possibility that the parties may reconcile. If that is the position, it would undoubtedly be in the interest of the parties. In view thereof, Respondent will be entitled to make an appropriate Application for seeking help of mediation before the concerned transferee Court and if any such Application is made, the same shall be considered by the said Court in accordance with law.

10. I would like to place on record my appreciation for Advocate Mr. Ajgaonkar being appointed through Legal Aid for the Applicant who has ably assisted this Court. The Legal Services Authority shall make over the remuneration to him as per rules within a period of two weeks from today on presentation of a server copy of this order.

11. At this stage, Mr. Ajgaonkar informs me that under the Government Resolution (for short "GR") issued by the State Government pertaining to Honorarium (Professional Fees) payable to the Advocates on the Legal Aid Panel, the same stipulates different rates and categories of fee Schedule to be paid to the empanelled Advocate who is appointed through Legal Aid depending upon the trajectory and journey of the matter on the dates before the Court until it is disposed of. He would submit that the said GR clearly

stipulates fees to be paid for effective and non-effective hearing before the Court with a maximum ceiling fee payable in respect of the cases heard and disposed of by the Court. However, he would submit that after the matter is over the Legal Aid Department does not adhere to the aforesaid fee structure and infact pays a lumpsum amount of Rs. 6,000/- per case to the concerned empanelled Advocate.

12. At this stage, Mr. Bhujbal, learned Advocate sitting in the Court also interjects and seeks leave of the Court to address the Court on this issue, as this issue affects a large number of Advocates appointed through Legal Aid. This Court has permitted Mr. Bhujbal to address the Court. He has placed on record a Schedule of honorarium payable to the legal practitioners on the panel and others under Regulation 18(1) of the Maharashtra State Legal Services Authority Rules, 1998 to draw the attention of the Court to the issue raised by Mr. Ajgaonkar. He would submit that if the said chart / Schedule of fee is perused, it would be clear that fee of the Legal Aid Advocate is required to be paid as per the description of work and recommended fee Schedule stated therein. However, he would submit and join hands with Mr. Ajgaonkar to state that the said Schedule is not followed and fees are paid on a lumpsum basis at the rate of Rs. 6,000/- to the Advocate who completes the assignment of appearing

after disposal of the matter for which they are appointed through Legal Aid. I have perused the Schedule placed before me.

13. The above issue is extremely vital and would affect a plethora of Advocates who are empanelled and appointed to represent and espouse the cause of deserving litigants through Legal Aid. Since the issue has been raised by the Advocates before me, all that I can do is to direct the concerned Legal Aid Department which is the High Court Legal Aid Services Committee to ensure that the said fee structure / Schedule of honorarium payable to the legal practitioners on the panel is followed in its true letter and spirit, if the same is not followed by them. If the fact that lumpsum payment is made to the Advocates is true, then it is extremely unfair to the Advocates who appear through Legal Aid, as from my experience of hearing matters in this Court, the Advocates appointed through Legal Aid are fully prepared on all dates of hearing and they do not seek adjournments at all. All empanelled Advocates who appear in this Court through Legal Aid perform and assist the Court to the best of their ability at all times.

14. In that view of the matter, the grievance which is noted herein above shall be immediately looked into by the Secretary, High Court Legal Aid Services Committee, Mumbai. Request is made to the Secretary to ensure that the Schedule of fee structure is followed scrupulously and strictly in accordance with law and if any correction

is required, the same shall be effected with immediate effect, in accordance with the Schedule of payment.

15. One of the reason which compels me to pass this order is because Legal Aid is provided to litigants as an extension of access to justice to the marginalized sections of the Society and more specifically those sections which really deserve the same or otherwise they would go unrepresented in the Courts. In that view of the matter, it is our endeavour to ensure that Legal Aid empanelled Advocates who are appointed are paid the recommended fee as per the Schedule of payment according to the description of work done by them for the work done, for the effective and non-effective appearances strictly according to the Schedule, once they complete their assignment. Otherwise there will be dereliction and de-motivation on the part of the Advocates who will appear in Courts and it will percolate down to the representation for the litigants for whom they are appointed. This cannot be allowed to happen. Advocates at the bar who offer their services through Legal Aid are required to be motivated and their resolve is required to be strengthened. For this they should be paid their fees duly.

16. For the sake of convenience, Schedule under Regulation 18(1) of the Maharashtra State Legal Services Authority Rules, 1998 which has been placed before me and also referred to and alluded to

herein above is taken on record and marked "X" for identification. I am reproducing the said Schedule herein under for the benefit of the High Court Legal Aid Services Committee, Mumbai to consider the same strictly in accordance with law.

"X" *25/9/2024*

महाराष्ट्र शासन राजपत्र, भाग एक-मध्य उप-विभाग, गुरुवार ते बुधवार, जुलै १४-२०, २०२४/आपारा ५१-५९, अंक १९४४

18. Honorarium payable to legal practitioners on panel and others:—

Schedule

[see Regulation 18(1)]

(A) FOR HIGH COURT

HONORARIUM (PROFESSIONAL FEES) PAYABLE TO THE ADVOCATES ON THE PANEL

Drafting (Civil Matters-Common For Appellate and Original Side)		
Sr. No.	Description of Work	Recommended Fee Schedule
1	Drafting and filing of substantive pleadings such as Writ Petition, Appeal, Plaint, Cross Appeal, Cross Objection, Written Statement, Counter Claim, affidavit in reply or rejoinder in substantive proceedings.	Rs.6,000/- per case. (In group/connected/batch matters or substantially similar matters the Advocate will be entitled to an additional drafting fee of Rs.3,000/- per case subject to maximum total of Rs.9,500/- per group of connected cases) An amount of Rs.3,000/- shall be paid to Panel Advocate as advance payment of fees.
2	Drafting and filing of Review/Revision Petition, Reply to Counter Claim, Reply to Revision/ Review Petition, Replication, Contempt Petition, Arbitration & Conciliation Application, Succession Act Application etc.	Rs.3,500/- per case.
3	Drafting and filing of Miscellaneous pleadings such as application, reply to application, execution petition, reply to execution petition, transfer petition, additional or supplementary affidavit or pleadings, Civil Application, Notice of Motion and Chamber Summons.	Rs.2,500/- per case / application / reply
4	Drafting and filing of any other pleading not referred above.	Rs.2,500/- per case

महाराष्ट्र शासन राजपत्र, भाग एक-पंचम विभाग, मुम्बई ते बुधवार, जुलै १४-२०, २०२२/आषाढ २३-२९, शके १९४४

Original Side Matters

Sr. No.	Description of Work	Recommended Fee Schedule
1	Drafting, filing and conducting all Civil Suits (inclusive of all Miscellaneous Applications filed therein) including drafting of Plaint and written statement.	Rs.30,000/- per case payable as follows :- a. Rs.9,000/- at the time of filing of plaint or written statement. b. Rs.9,000/- on completion of evidence. c. Rs.12,000/- on conclusion of case.
2	O.A., Review, Arbitration Petition U/s. 11, Application U/s.340 of Cr.P.C. & Contempt Petition.	Rs.6,000/- per case.
3	Arbitration Petition U/sec. 9 and sec.34 of the Arbitration & Conciliation Act.	Rs.12,000/- per case for Sec.9 Rs.30,000/- per case for Sec.34 (Advance of Rs.6,000/- for Sec.9 and Rs.12,000/- for Sec.34.)
4	In any other Original matter not referred above	Rs.9,000/- per case.

Appellate Side Civil Matters

Sr. No.	Description of Work	Recommended Fee Schedule
1	All cases before an Hon'ble single Judge (Inclusive of all miscellaneous applications filed in a case)	Rs.800/- for non effective hearing. Rs.1,500/- for effective hearing. (The maximum fee payable shall be Rs.18,000/- irrespective of number of hearings)
2	All cases before a Division Bench (Inclusive of all miscellaneous applications filed in a case)	Rs.1,000/- for non effective hearing. Rs.2,000/- for effective hearing. (The maximum fee payable shall be Rs.30,000/- irrespective of number of hearings)
3	Revision Petition/Contempt Petition	Rs.6,000/- per case

महाराष्ट्र शासन राजपत्र, भाग एक-मध्य उप-विभाग, गुरुवार ते बुधवार, जुलै १४-२०, २०२२/आपाठ २३-२९, शके १९४४

Criminal Matters		
Sr. No.	Description of Work	Recommended Fee Schedule
1	All cases before an Hon'ble Single Judge (Inclusive of all miscellaneous applications filed in a case)	Rs.800/- for non effective hearing. Rs.1,500/- for effective hearing. (The maximum fee payable shall be Rs.25,000/- irrespective of number of hearings)
2	All cases before a Division Bench (Inclusive of all miscellaneous applications filed in a case)	Rs.1,000/- for non effective hearing. Rs.2,000/- for effective hearing. (The maximum fee payable shall be Rs.30,000/- irrespective of number of hearings)
3	Revision Petition/Contempt Petition	Rs.9,000/- per case
4	Bail Application, Anticipatory Bail Application, Parole Application, Sentence Suspension Application and any other application	Rs.6,000/- per case
5	Criminal Petitions for quashing of F.I.R. U/sec.482 of Cr.P.C.	Rs.7,500/- per case
Drafting (Criminal Matters)		
Sr. No.	Description of Work	Recommended Fee Schedule
1	Drafting of substantive pleadings such as Writ Petition, Criminal Appeal, Application for leave to prefer an Appeal, Applications/Petitions u/s.482 of Cr.P.C.	Rs.6,000/- per case. (In group/connected/batch matters or substantially similar matters the Advocate will be entitled to an additional drafting fee of Rs.3,000/- per case subject to maximum total of Rs.20,000/- per group of connected cases)
2	Criminal Revision.	Rs.6,000/- per case.
3	Bail Application, Anticipatory Bail Application, Parole Application, Sentence Suspension Application and any other application.	Rs.1,500/- per case/application
4	To any other pleading not referred above	Rs.2,000/- per case

17. A server copy of this order shall be placed before the Secretary, High Court Legal Aid Services Committee, Mumbai for information and necessary action.

18. With the above directions, MCA is allowed and disposed.

[MILIND N. JADHAV, J.]