

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO. 139 OF 2024

Tushar Sampat Mane & Ors.

.. Applicants

Versus

Bhagyashri Tushar Mane

.. Respondent

.....

- Mr. Ramakant D. Patil for Applicants
- Mr. Vipinchandra Ramrao Kasle i/by Mr. Rahul Joshi for Respondent

.....

CORAM : MILIND N. JADHAV, J.

DATE : SEPTEMBER 20, 2024

P. C.:

1. Heard Mr. Patil, learned Advocate for Applicants and Mr. Kasle, learned Advocate for Respondent.

2. Present Misc. Civil Application (MCA) is filed by Applicant No. 1 - husband and four other family members. After hearing learned Advocates for the parties, on 13.09.2024 this Court passed the following order:-

"1 Heard Mr. Patil, learned Advocate for Applicants and Mr. Kasle, learned Advocate for Respondent.

2. On 4th September 2024, after hearing Mr. Kunchage, learned Advocate for Applicants following order was passed :

"1. Heard Mr. Kunchage, learned Advocate for Applicants.

2. There are five Applicants before me. Applicant No.1 is husband of the Respondent. Applicant Nos. 2 and 3 are the old retired parents of Applicant No. 1 whereas Applicant Nos. 4 and 5 are the sisters of Applicant No. 1.

3. Respondent has filed a DV Act proceedings in the Civil Court at Aurangabad of which the transfer is sought to the Magistrate

Court in Pune. Applicant No. 1 has filed Marriage Petition in the Family Court at Pune, which is pending in the Family Court at Pune. Applicant No. 1 is a Research Fellow whereas Applicant Nos. 4 and 5 are working as a Teacher and Lecturer in Pune.

4. Record shows that Respondent has filed Misc. Civil Application(for short "MCA") seeking transfer the Marriage Petition from Pune to Aurangabad.

5. Today, Mr. Kunchage, learned Advocate for the Applicants on being asked about the averment made in the Petition that Respondent's MCA before the Aurangabad Bench is pending, he would state that he shall find out its status. He is directed to place on record the status of the said MCA before me on the next adjourned date. Be that as it may, server copy of this order shall be served on the Respondent by the Advocate for Applicants and file appropriate Affidavit of service of having served the Respondent by any permissible mode of service which shall be filed on record on the next adjourned date before this Court. Only if this Court finds that Respondent has been served, this Court shall consider the present MCA on the next adjourned date, subject to the status of MCA filed by Respondent.

6. Prima facie there are certain reasons stated in the MCA and more specifically the grounds enumerated in paragraph No. 10 which relate to the difficulty faced by Applicant Nos. 2, 3 and 4.

7. Respondent is directed to remain present before this Court on the next adjourned date, if she is served. This order is to be passed only because one final opportunity is given to Respondent to present in Court, failing which this Court shall consider the present MCA on its own merits and decide the same in accordance with law.

8. Another reason for me to pass such an order is that because Respondent has already been duly served on 23.08.2024.

*9. Stand over to **13th September 2024**. To be placed under the caption "**First on Board**".*

3. Today Mr. Kasle appears for Respondent. Both learned Advocates jointly inform the Court that Respondent-wife has filed Misc. Civil Application(for short "MCA") before Aurangabad Bench seeking transfer of the Marriage Petition from the Family Court at Pune to the Family Court at Aurangabad. Stay has been granted by the Court in that MCA and that MCA is presently pending. Today after hearing learned Advocates for the respective parties, I have impressed upon Mr. Patil, learned Advocate appearing for Applicants that in view of the pendency of the MCA filed by Respondent-wife, I am not inclined to consider the request of Applicants seeking transfer of the D.V. Act Proceedings to Mumbai primarily because of the lis between Applicant No. 1 and Respondent who are husband and wife.

4. At the request of learned Advocate for Applicants to take further instructions, stand over to 20th September 2024."

3. It is ascertained that MCA No. 250 of 2023 filed by Respondent wife is pending before the High Court at Bombay, Bench at Aurangabad. Notices have already issued therein. Considering the hardship to the Respondent, I had expressed my mind to learned Advocate for Applicant on the previous date.

4. Today Mr. Patil has placed before me instructions received from Applicant No. 1 through email agreeing and giving his consent for transfer of Marriage Petition and D.V. Act proceedings to Family Court at Aurangabad and seeks clubbing of both the proceedings. In so far as the Civil Defamation Suit filed against Respondent is concerned, there is a conditional request made and consent is given by Applicant No. 1. Though he has stated that Civil Defamation Suit filed against Respondent be transferred to the appropriate Court in Aurangabad, he has also simultaneously requested that Defamation Suit against Dr. Anuradha Kulkarni be retained at Shivaji Nagar, Pune. Said Dr. Anuradha Kulkarni is a third party, hence the request made by Applicant therefore cannot be accepted considering that this Court is exercising powers under Section 24 of the CPC regarding transfer of proceedings on the basis of hardship to the wife.

5. Mr. Kasle has placed before the Court a chart of various proceedings between the parties. Email addressed by Applicant No. 1

and the said chart are taken on record and marked "X-1" & "X-2" for identification.

6. In view of the above, by consent of both the learned Advocates following proceedings shall stand transferred to learned Family Court at Aurangabad:-

- (i) PWDVA Appl. No. 517 of 2023 shall stand transferred from JMFC, Aurangabad to Family Court at Aurangabad;
- (ii) Marriage Petition No. A-1339 of 2023 shall stand transferred from Family Court, Pune to Family Court at Aurangabad.

7. By consent of the parties, the following proceedings shall stand transferred to the Court of Civil Judge Junior Division, Aurangabad:-

- (i) RCS No. 450 of 2024 shall stand transferred from CJSD, Pune to CJSD, Aurangabad.

8. In view of the above order, parties are at liberty to place a copy of this order before the appropriate Court seized of hearing MCA No. 250 of 2023, MCA No. 192 of 2024 and Cri. Application No. 1380 of 2024 so that the said proceedings can be disposed of in view of the above order.

9. It is clarified that Applicant Nos. 2 to 5 shall stand exempted from their physical appearance and shall be permitted by the Family Court at Aurangabad to appear through VC on all scheduled dates of hearing.

10. With the above direction, present MCA stands allowed and disposed.

Amberkar

[MILIND N. JADHAV, J.]

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signed by
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