



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

CRIMINAL REVISION APPLICATION NO. 202 OF 2019

APPLICANTS

: 1. Sau. Kiran Sitaram Gujla, Aged about 41 Years, Occupation : Household.

2. Ku. Ashwini Sitaram Gujla, Aged about 19 Years, Occupation : Education.

Both Residents of C/o. Prakash Natthuji Ramteke, Deshmukh Fail, Akola, Taluka and District Akola.

//VERSUS//

NON-APPLICANT

: Sitaram Anjnelu Gujla, Aged about 51 Years, Occupation : Service (Accounts Officer), South Central Divisional Railway Office, Statistical Department, Hyderabad Bhawan, Secunderabad (Andhra Pradesh).

Smt. S.P. Deshpande, Advocate (appointed) for the Applicants.
Mr. A.M. Tirukh, Advocate for the Non-applicant.

CORAM : G. A. SANAP, J.

DATED : 5th AUGUST, 2024.

ORAL JUDGMENT

. Heard finally with the consent of learned advocates for the parties.

02] **ADMIT.**

03] In my view, considering the main issue of jurisdiction being involved in this proceeding, this proceeding can be decided without going into the merits of the matter.

04] The non-applicant, in his reply filed before the Family Court at Akola, raised a specific contention that the Family Court has no jurisdiction to entertain and try the application. It was contended that the applicants neither resided at any time within the jurisdiction of the Family Court at Akola nor were residing within the jurisdiction of the Family Court at Akola on the date of the filing of the application. It is also not the case of the applicants that, at any time, the non-applicant resided within the jurisdiction of the Family Court at Akola.

05] In view of this, the learned Judge was required to decide the issue of jurisdiction, and depending upon the finding on this issue, one way or the other was required to adopt further course of action. In this case, the learned Judge has chosen to decide the issue of jurisdiction with the main issues/points of fact. The learned Judge has held that the Family Court at Akola has no

jurisdiction to entertain and try the application.

06] Perusal of the order would show that, despite this finding on the issue of jurisdiction, the learned Judge has considered the application for maintenance on merits and rejected the same as well. In my view, this order of the learned Judge rejecting the application on merits is not in accordance with the law. When a Court records a finding that it has no jurisdiction to entertain the proceeding, the Court is required to return the plaint or application to the party concerned for presentation before the proper Court having the jurisdiction to decide the same. The order or decree passed by the Court on merits without jurisdiction is nullity.

07] In this case, therefore, after recording a finding on the issue of jurisdiction against the applicants, the learned Judge was required under the law to return the application to the applicants for presentation before the proper Court. The learned Judge, as can be seen from the order, has appreciated the evidence adduced by the parties and dismissed the application for maintenance on merits. In my view, this part of the order passed by the learned Judge is without jurisdiction and therefore it cannot be sustained.

As such, this revision application deserves to be allowed. Hence, the following order:

ORDER

- i] The Revision Application is **allowed**.
- ii] The judgment and order dated 29.11.2017, passed by the learned Judge of the Family Court at Akola, rejecting the application on merits, is set aside.
- iii] Since the Court has held that it has no jurisdiction to entertain and try the application, the Court was required to return the said application to the applicants for presentation before the proper Court.
- iv] In view of the setting aside of the order on merits, Petition No. E-8/2017 stands restored. However, the finding recorded by the learned Judge of the Family Court on the issue of jurisdiction is not interfered with.
- v] In view of this, the learned Judge of the Family Court shall pass an order for return of the application to the applicants for presentation before the Court having territorial jurisdiction.
- vi] The parties are directed to appear before the Family Court at Akola on 26th August, 2024.

vii] The High Court Legal Services Sub-Committee, Nagpur, shall pay the fees to the learned advocate appointed for the applicants, as per Rules.

viii] The Revision Application stands disposed of in the above terms.

(G. A. SANAP, J.)

Vijay