

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****MISCELLANEOUS CIVIL APPLICATION NO. 239 OF 2024**

Jyoti Abhijeet Kandage)
 Age 31 years, Occ : Govt. Job,)
 R/at : Flat No.-B 606, Anand Prospera,)
 Hari-Om Nagar, Tal. Karveer,)
 Dist. Kolhapur, Pin 416 012) Applicant

VERSUS

1) Abhijeet Narayan Kandage)
 Age : 31 years, Occ : Govt. Job,)
 Add. :- Regional Transport Office,)
 Transport Road, Vijapur Office,)
 S.T. Colony, Solapur : 413 004)
 Native place :- at/Post Kandgewasti Nhavare)
 Tal. Shirur, Dist. Pune. Pin. 412 211)

2) Archana Arjun Kandage,)
 Age : 31 years, Occu. Service,)
 R/at : Wagholi, Pune)
 Permanent address :)
 at/Post Kandgewasti Nhavare, Tal. Shirur,)
 Dist. Pune. Pin 412 211.)

3) Indumati Narayan Kandage,)
 Age : 50 years, Occu. Housewife,)
 R/at: Post Kandgewasti Nhavare,)
 Tal. Shirur, Dist. Pune. Pin 412 211) Respondents

Mr. Paras Yadav for the Applicant.

Mr. Kapil P. Shetye for the Respondents.

CORAM : RAJESH S. PATIL, J.**DATE : 15 SEPTEMBER, 2025**

JUDGMENT :-

1) This transfer application has been filed by the Applicant who is the wife of the Respondent No. 1, seeking transfer of the marriage petition for divorce filed by the Respondent No. 1-Husband before Civil Judge, Senior Division, Pune, *and* of Domestic Violence proceedings filed by the Respondent No. 2-sister-in-law and Respondent No. 3-mother-in-law before Judicial Magistrate, First Class, Shirur, Pune, to the Family Court at Kolhapur.

2) By an Order dated 4 April, 2025, the co-ordinate Bench of this Court had by consent of both the parties transferred the Divorce proceedings filed by the husband before Civil Judge, Senior Division, Pune, to the Family Court at Kolhapur. Therefore, this application is argued only for the remaining prayer, which seeks transfer of Domestic Violence proceedings filed by the sister-in-law and mother-in-law, before the Judicial Magistrate First Class, Shirur at Pune, to the Family Court at Kolhapur. The stage of Domestic Violence Proceedings as per E-Courts website is "Awaiting Summons".

3) I have heard learned Advocates for both the sides and with their help, I have gone through the proceedings which have been filed by both the parties and I have also gone through the judgments

referred by the learned Advocates for both the sides.

4) The Applicant-Wife is seeking transfer of the Domestic Violence proceedings from Judicial Magistrate, First Class, Shirur, Pune to the Family Court at Kolhapur on following grounds:-

(I) The Applicant-Wife has to take care of her one and half year old son, whereas the sister-in-law aged 31 years, who has filed Domestic Violence proceedings has no children out of her marriage to take care of. Therefore, she can manage to travel from Shirur, Pune to Kolhapur.

(II) The mother-in-law who has also filed Domestic Violence proceedings is aged 51 years and has no responsibility, hence can manage to travel from Shirur, Pune to Kolhapur.

(III) The Applicant-Wife is working as an officer in Regional Transport Office at Kolhapur and has to attend duty of 12 hours everyday.

(IV) The distance between Shirur, Pune and Kolhapur is around 300 km. Therefore, travelling from Kolhapur to Shirur, Pune and back, would be around 600 km on each day of hearing.

(V) The Applicant-Wife has filed a marriage petition under Section 9 of the Hindu Marriage Act, 1955, for restitution of conjugal rights before the Family Court at Kolhapur being Petition A No. 94 of 2024. She has also filed Domestic Violence proceedings against the husband and in-laws before the Judicial Magistrate, First Class at Kolhapur.

4.1) To buttress his submission, learned Advocate for the Applicant has relied upon the judgment passed by Supreme Court in case of *N.C.V. Aishwarya vs. A.S.Saravana Karthik Sha*, reported in *2022 SCC OnLine SC 1199*. He also relied upon judgment of this Court in case of *Rohan Shah vs. Nishigandha Shah*, reported in *2023 SCC OnLine Bom 2719*.

5) On behalf of the Respondents, it has been submitted by Mr. Kapil Shetye, that it will be inconvenient for both the females i.e. mother-in-law and sister-in-law to travel from Shirur, Pune to Kolhapur, if the proceedings are transferred. It is also submitted that the sister-in-law is undergoing treatment for conceiving baby at Pune. Therefore, it will cause hardship to her to travel to kolhapur.

5.1) Mr. Shetye, learned Advocate for the Respondents further

submitted that since in this Domestic Violence proceedings, the husband is not a party, the Domestic Violence proceedings cannot be transferred to the Family Court at Kolhapur as jurisdiction of the Family Court is to decide disputes between husband and wife. Therefore, the transfer application needs to be rejected.

6) Before coming to the facts of this case, I would like to first put to rest the issue about 'Whether the Domestic Violence proceedings can be transferred from Magistrate's Court to a Family Court ?'.

7) For the purpose of deciding the said issue, Section 12 and 26 of the The Protection of Women from Domestic Violence Act, 2005 (hereafter referred to as "D.V. Act") needs to be looked into. The said Sections read as under :-

12. Application to Magistrate.—

(1) An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act:

Provided that before passing any order on such application, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider.

(2) The relief sought for under sub-section (1) may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent:

Provided that where a decree for any amount as compensation or damages has been passed by any court in favour of the aggrieved person, the amount, if any, paid or payable in pursuance of the order made by the Magistrate under this Act shall be set off against the amount payable under such decree and the decree shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance amount, if any, left after such set off.

(3) Every application under sub-section (1) shall be in such form and contain such particulars as may be prescribed or as nearly as possible thereto.

(4) The Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the court.

(5) The Magistrate shall Endeavour to dispose of every application made under sub-section (1) within a period of sixty days from the date of its first hearing.

26. Relief in other suits and legal proceedings.—

(1) Any relief available under sections 18, 19,20,21 and 22 may also be sought in any legal proceeding, before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.

(2) Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court.

(3) In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief.

8) Section 12 of D.V. Act gives power to the Magistrate to hear and decide complaints seeking any reliefs under the D.V. Act. Under sub-section(5), the Magistrate is supposed to make an endeavour to dispose of the application within 60 days from first date of hearing.

8.1) Similarly, under the provisions of Section 26 of the D.V. Act, if the aggrieved person does not wish to go to the Magistrate as per the provisions of Section 12 of the D.V. Act, then for the purpose of seeking reliefs under Sections 18 to 22 of the D.V. Act, the aggrieved person has one more choice to directly go to the Civil Court, Family Court or Criminal Court. Therefore, even all these Courts are given power to hear and pass order for relief sought under Sections 18 to 22 of the D.V. Act, similarly like Magistrate's Court.

JUDICIAL PRONOUNCEMENTS ON TRANSFER OF D.V. PROCEEDINGS :

9) Full Bench of this Court in case of ***Nandkishor Pralhad Vyawahare vs. Mangala w/o. Pratap Bansar, 2018(3) Mh.L.J. 913*** was dealing with issues: (i) whether or not the proceedings under the Protection of Women from Domestic Violence Act, 2005 are in the nature of criminal proceedings ? and (ii) Whether or not the High Court can exercise its powers under section 482 of the Code of Criminal Procedure, 1973 in respect of the proceedings under the

Protection of Women from Domestic Violence Act, 2005 ?.

9.1) While discussing the issues, the Full Bench in case of ***Nandkishor Vyawahare*** (supra) in paragraph nos. 30 to 32 has held that the D.V. Act proceedings are of civil nature. Paragraph nos. 30 to 32 of the said judgment read as under :-

30. Under section 12(1) of the Act, an application may be made to the Magistrate, who could be a Judicial Magistrate of the first class or as the case may be, the Metropolitan Magistrate in Mumbai metropolitan region, as defined under section 2(i), for seeking various reliefs as provided under sections 18, 19, 20, 21, and 22. These reliefs, we cannot ignore, are for redressing breach of civil rights and have a civil flavour, not known to criminal law. Besides, it is not the Judicial Magistrate First Class or the Metropolitan Magistrate, as the case may be, who alone is competent to decide an application under section 12(1). Even a Civil Court or a Family Court or any other Criminal Court conducting any legal proceeding which has the power under section 26 to do so. This would mean, just to give example, it is possible to obtain these reliefs even in a petition filed for divorce between the same parties under the provisions of Hindu Marriage Act, 1955. This should leave no doubt in our mind that the rights created and remedies provided for breaches thereof in the D.V. Act have been viewed by the Parliament as basically of civil nature and, therefore, by specific provisions, authority has been conferred even upon the civil Courts, in addition to criminal Courts, under section 26 of the Act, to deal with an application filed for seeking various remedies provided under sections 18 to 22 of the D.V. Act.

31. The provision made for designating the Court of Judicial Magistrate or the Metropolitan Magistrate as the Court where application under section 12(1) of the D.V. Act can be made, appears

to have been done only with a view to provide teeth to the powers of the Court. After all, a Court of Judicial Magistrate, First Class with a jurisdictional sway over the police stations, would be in a better position to lend help to the aggrieved person in executing the orders passed by it. But, in order to give more option to and widen the choice of the forum of the aggrieved person, it is laid down in section 26 that the reliefs under the D.V. Act could also be sought in other proceedings before other Courts - civil or criminal, affecting the aggrieved person and the respondent.

32. Making of criminal and civil Courts simultaneously as appropriate fora to obtain the reliefs provided under the D.V. Act is a certain pointer to the fact that the character of the proceeding is not dependent upon the nature of the tribunal which is invested with the authority to grant relief, but upon the nature of the right violated and the kind of relief that may be had. We have already seen that rights created and remedies provided for in the D.V. Act are basically of civil nature.

[Emphasis Supplied]

9.2) I am bound by the view taken by the Full Bench, which clarifies that the reliefs provided under the D.V. Act are basically of civil nature, and the aggrieved person can approach Civil and Criminal Courts simultaneously.

10) In the case of ***Rohan Shah*** (supra), Single Judge of this Court has held in paragraph no.105 that there is no bar on Family Court to try D.V. Proceedings. Paragraph No. 105 reads as under :-

105. In my view, there is no specific bar on the Family Court to try PWDV proceedings, considering the objective of the Family Court.

In fact, Section 26 of the PWDV Act empowers any Civil Court including Family Court to grant reliefs u/s 18 to 22 of the PWDV Act.

10.1) It is pertinent to note here that while transferring proceedings in the case of ***Rohan Shah*** (supra), the Court was dealing with the facts, where initially the couple was residing in USA and they returned to India in the year 2008. Eighteen years into their marriage, in or around 2019, the couple decided to separate on account of marital discord. The Respondent-Wife left for USA on 25 October, 2021 with the intention to seek divorce and maintenance before the Supreme Court of New Jersey, USA. However, the Respondent-Wife's application before the US Supreme Court was dismissed on the ground of jurisdiction. The husband filed his divorce petition before the Family Court at Mumbai. The wife filed interim application for maintenance in husband's divorce petition in Family Court at Mumbai. Considering these facts, the Single Judge of this Court allowed the transfer application of the husband, holding that no prejudice would be caused to the Respondent-Wife if the proceedings are transferred.

11) After the judgment of this Court in case of ***Rohan Shah*** (supra) was pronounced, a Single Bench of this Court (Coram : Arun R. Pednekar, J.) in case of ***Anuraag Agarwal vs. Poonam Agarwal nee***

Mukim reported in ***2024 SCC OnLine Bom 2105*** decided on 9 July, 2024 while deciding husband's transfer application in paragraph nos. 9 and 10 held that the High Court has power to transfer the D.V. proceedings from Magistrate Court to the Family Court and there is no need to refer the issue to a larger Bench. The Court further held in paragraph no. 14, that there is no bar to seek maintenance, both under the D.V. Act and Hindu Marriage Act. The Court further held in paragraph nos. 15 to 17 that if the conflict of judgment is a sole ground of transfer, every transfer petition filed by the husband will have to be allowed, giving no choice to the wife to approach the Magistrate's Court. Paragraph Nos. 15 to 17 of the said judgment reads as under :-

15. If conflict of judgment on same facts and between the same parties is the sole ground of transfer, every transfer petition filed by the husband will have to be allowed by this Court making the choice of wife to approach the Magistrate meaningless. The choice available to the wife file application either under section 12 or under Section 26 of the D.V. Act would be rendered nugatory. In the Application under Section 12, the Magistrate is required to make an endure to decide it in 60 days, whereas is a transfer petition is entertained by this Court it consume substantial time rendering the mandate of Section 12 of expeditious disposal nugatory.

16. In the motion moved in the Parliament to pass the D.V. Act 2005, the Hon'ble Minister in response to the concern raised by an as regards the limited time granted to the magistrate to decide the D.V.

Application had responded as under:

“Shrimati Sumitraji is not present here. She said that the duration of 60 days is very less. But it has been mentioned in the bill that magistrate shall try to dispose of the case within 60 days. Since this is an emergency law, therefore, it becomes necessary to set a time limit so that unnecessary delay may be avoided.”

Thus this Court should be slow in entertaining the application under Section 24 of the CPC to transfer application under Section 12 of the D.V. Act instituted by the wife before the Magistrate to the Family Court.

17. The Supreme Court in a case of Mohammed Danish Abdul Wahab & Ors. V/s. Farjana Mohammed Danish & Ors. reported in 2024 SCC Online SC 1435” where transfer was sought of proceedings under the D.V. Act to the Family Court, has passed following order:-

“ 1. The Petitioner No.1 who is the husband seeks transfer of the pending proceedings initiated under the Protection of Women from Domestic Violence Act, 2005. As the said proceedings being summary in nature where the legislature has consciously given an outer limit, we are not inclined to allow this Transfer Petition, instead we direct the Judicial Magistrate First Class, Bhivandi, Thane, Maharashtra to dispose of PWDVA No.51 of 2016 within a period of eight weeks from today.

2. The Transfer Petition, is accordingly, dismissed.

11.1) Considering the view of Supreme Court in case of

Mohammed Danish Abdul Wahab & Ors. (supra), while rejecting the transfer application, this Court in case of ***Anuraag Agarwal*** (supra) directed the Magistrate's Court to decide the application within 60 days and imposed cost of Rs.10,000/- on the Applicant-Husband. The order passed by the learned Single Judge of this Court in case of ***Anuraag Agarwal*** (supra) was challenged in Supreme Court. By its Order dated 22 July, 2024 passed in Special Leave to Appeal (Civil) No. 15523 of 2024, the Supreme Court rejected the SLP.

12) As far as judgment of the learned Single Judge of this Court in case of ***Vijay Suryakant Kakade vs. Anushka Vijay Kakade & Ors.*** in ***Miscellaneous Civil Application No. 498 of 2022*** with connected matter dated 2 February, 2023 in the course of allowing the transfer application of the husband considering the facts, the Court held that after transfer, there will be no inconvenience to the wife as both the husband and wife were staying in the same city and the age of husband as shown in cause title is 24 years and the wife's age is 23 years. Therefore considering the facts of that case the transfer was allowed.

13) The learned Single Bench of this Court in the case of ***Natalia Sachin Suri vs. Sachin Sushil Suri*** in ***Miscellaneous Civil***

Application No. 417 of 2024 order dated 25 April, 2025 while dealing with the wife's transfer petition, refused to transfer the D.V. proceedings from Magistrate Court at Andheri to the Family Court at Bandra, considering the stage of the proceedings which was at recording of evidence.

14) Similarly, the learned Single Bench of this Court in the case of ***Rishit Satish Kapadia vs. Setu R. Shah @ Rishit Kapadia & Ors.***, in ***Miscellaneous Civil Application No. 449 of 2024*** dated 17 April, 2025 while dealing with the husband's transfer application seeking transfer of D.V. proceedings filed before Metropolitan Magistrate Court, Girgaon to the Family Court at Bandra, Mumbai, has rejected the application, on the ground that though both the parties resided in Mumbai, various complaints were pending before Magistrate Court apart from D.V. Complaint and divorce proceedings in the Family Court. The wife had already filed complaint under Section 31 of the D.V. Act, alleging breach of Protective Order.

15) Considering the Sections of D.V. Act, and the Judgments discussed in the above paragraphs, it becomes evident that Family Court has power to decide complaint which seeks relief under Sections 18 to 22 of the D.V. Act. Hence in my opinion, transfer of proceedings

from Magistrate's Court to Family Court pertaining to relief claimed under Section 18 to 22 of the D.V. Act can be allowed. However, if a transfer proceedings is not a bonafide one, then on merits such a transfer on case to case basis can be rejected. One has to also keep in mind the stage of the proceedings of which transfer is sought.

15.1) Section 26 of D.V. Act, refers to only reliefs sought under Section 18 to 22. Therefore, application/complaint seeking relief under any other section of D.V. Act viz. Section 31, etc. would not be maintainable before Family Court.

15.2) So also, one has to also keep in mind who is coming to the court for the transfer of the proceedings, whether it is the Wife or the Husband or any other party. Since a choice is given to the aggrieved person under the D.V. Act to choose the forum for reliefs sought under Section 18 to 22, (i.e.) before the Magistrate under Section 12 or to the civil court, family court or criminal court under Section 26, such transfer if sought by a Wife, considering the judgment of the Supreme Court in the case of *N.C.V Aishwarya* (supra) will have to be considered favourably.

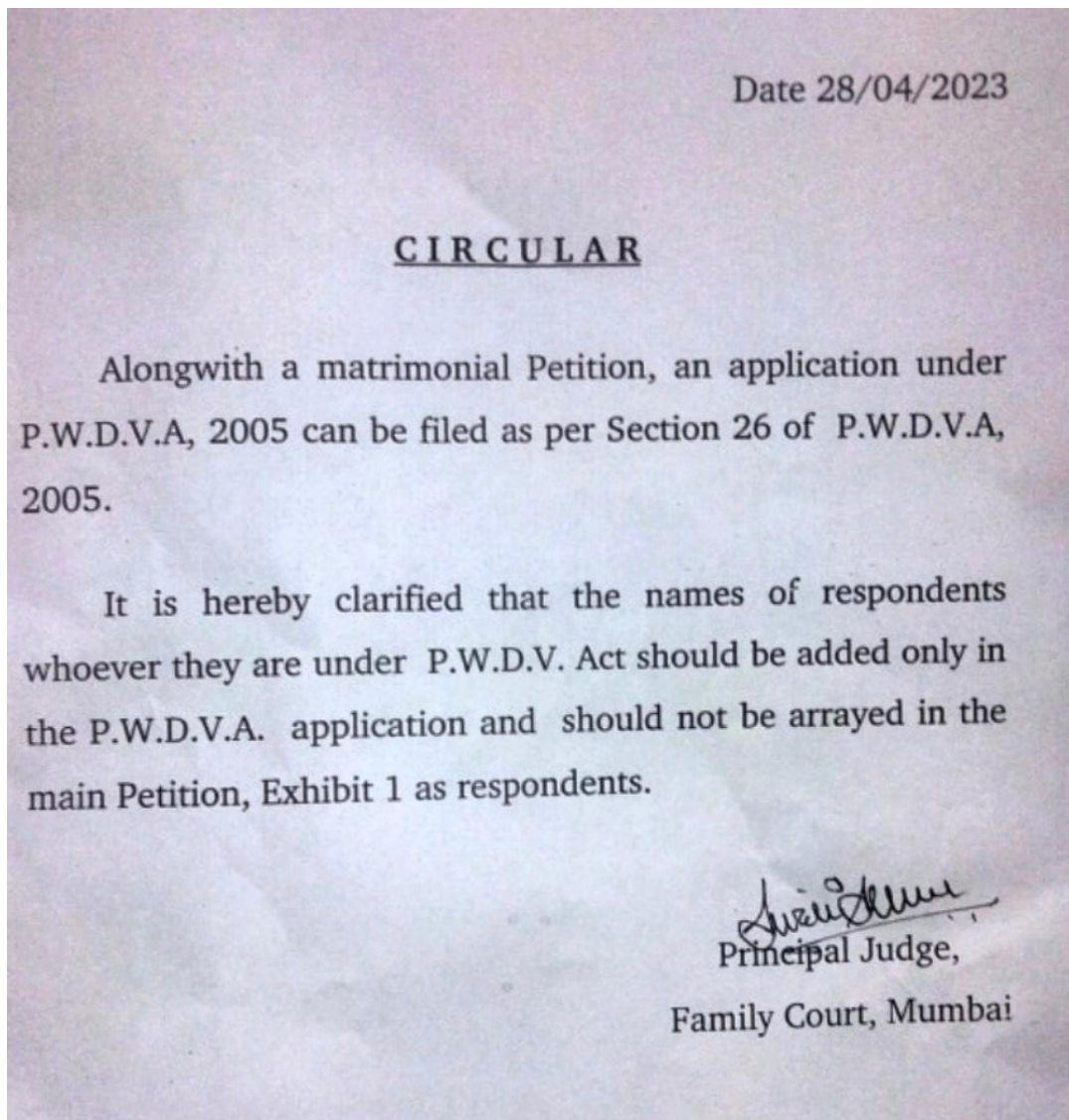
FACTUAL MATRIX

16) In the present proceedings, the fact remains that the

Applicant-Wife has to take care of her one and half years old son. To travel from Kolhapur to Shirur, Pune, the distance is around 300 km one way. The husband's divorce petition has already been transferred to Kolhapur. The Applicant-Wife's DV proceedings are at Kolhapur. The Respondent No.3 - mother-in-law is aged 51 years and is not a working woman. She is a homemaker. Therefore, the issue of she requiring to take leave from work place does not arise and she can travel to Kolhapur. The Respondent No.2 - sister-in-law is working in private service and does not have any responsibility to take care of a child, unlike that of the Applicant-Wife. The Applicant is a Government employee, working in Regional Transport Office at Kolhapur. Considering the provisions of Section 24 of the Code of Civil Procedure, for transfer of proceedings, the facts of the present proceedings are to be considered. The question is who is at more inconvenience and considering the law laid down by the Supreme Court in case of *N.C.V Aishwarya* (supra), in my view, it will be the Applicant-Wife who will be put to more inconvenience and therefore the present Miscellaneous Civil Application needs to be allowed. It is also important to note that the stage of D.V. Proceedings as per E-Courts website is "Awaiting Summons". Therefore, the evidence has

not yet started.

17) I was also shown circular dated 28 April, 2023 issued by the Principal Judge of Family Court, Mumbai. For ease of reference a scanned copy of the same is reproduced hereinbelow :-



18) This circular makes it clear that though the parties may not be husband and wife, the proceedings between them can be

transferred to the Family Court, and they will remain parties only to proceedings in D.V. matter. Hence, in the present case, D.V. proceedings of mother-in-law and sister-in-law i.e. PWDVA No. 57 of 2023, should be transferred to Family Court at Kolhapur. If an application for transfer of proceeding PWDVA No. 27 of 2024 filed by the Applicant-Wife pending before Judicial Magistrate, First Class, Kolhapur, to Family Court at Kolhapur is preferred by either of the parties, the same can be considered in accordance with law.

19) Miscellaneous Civil Application stands **allowed** in terms of **prayer clause (a)**.

20) PWDVA No. 57 of 2023 filed by the Respondent Nos. 2 and 3 before the Judicial Magistrate First Class, Shirur, Pune is hereby transferred to the Family Court at Kolhapur, District Kolhapur.

21) The Judicial Magistrate First Class, Shirur, Pune is directed to transfer the proceedings of PWDVA No. 57 of 2023 to the Family Court at Kolhapur, within one month.

22) All concerned to act on an authenticated copy of this Judgment.

[RAJESH S. PATIL, J.]