



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

942 WRIT PETITION NO. 1927 OF 2024

KIRAN AVINASH SHRIGANI

VERSUS

AVINASH MALLINATH SHRIGANI

...

Mr. Dayanand S. Mali, Advocate for the Petitioner

...

CORAM : AJIT B. KADETHANKAR, J.

DATE : 01.04.2026

PER COURT :-

1. Arising out of matrimonial discord between the petitioner and the respondent, the petitioner-wife instituted proceedings bearing HMP No.1 of 2018 before the Court of learned Joint Civil Judge, Senior Division, Omerga, seeking restitution of conjugal rights under Section 9 of the Hindu Marriage Act. The petitioner has also initiated proceedings under Section 12 of the Protection of Women from Domestic Violence Act, 2005, bearing PWDVA No. 15 of 2016 before the learned 3rd Joint Civil Judge, Junior Division, Omerga, against the respondent.

2. Mr. D. S. Mali, learned counsel for the petitioner submits that the petitioner has also filed Criminal Revision No. 12 of 2017 before the learned District Court at Omerga. On the other hand, the respondent-husband had instituted proceedings bearing HMP No. 209 of 2017 before the learned Civil Judge, Senior Division, Solapur, seeking dissolution of marriage. The said proceedings came to be dismissed, and the same is stated to be under challenge at the instance of the respondent.

3. He further submits that the respondent has already entered appearance in HMP No. 1 of 2018 and PWDVA No. 15 of 2016 at Omerga. However, the respondent filed an application at Exhibit-4, being Miscellaneous

Application No. 20 of 2023, before the learned Principal District and Sessions Judge, Osmanabad, seeking transfer of the aforesaid proceedings from Omerga to a competent Court at Osmanabad.

4. In the said application, it is averred that the petitioner's father is a practicing advocate at Omerga and regularly appears in both the proceedings. It is further alleged that the petitioner's father has represented the petitioner as an advocate and has also entered the witness box to depose in the matter. The respondent contended that the conduct of the petitioner's father created pressure on witnesses and that, being a practicing advocate in the same Court, he was influencing the proceedings. On these grounds, transfer of both proceedings was sought.

5. After hearing both parties, the learned Principal District and Sessions Judge, Osmanabad, observed that the respondent had raised an objection regarding the presence of the petitioner's father, who is an advocate by profession, and his role in the proceedings as well as a witness. The learned Judge held that:

“The apprehension of pressurizing witnesses at the hands of the father of the petitioner expressed by the applicant cannot be overlooked.”

On this basis and in order to protect the legal rights of the litigant, the learned Principal District and Sessions Judge deemed it appropriate to transfer both proceedings to Osmanabad. Accordingly, by order dated 01.08.2023, both matters were transferred. Being aggrieved thereby, the present writ petition has been filed.

6. Learned counsel for the petitioner submits that the reasoning recorded by the learned Principal District and Sessions Judge is wholly

unjustified. He contends that the issue as to whether an advocate representing a party can depose as a witness is a matter to be decided by the Trial Court in accordance with law.

7. He further submits that in matrimonial disputes, it is natural for close relatives including those who may be advocates to remain present during proceedings. Mere presence or participation of the petitioner's father cannot be a ground for transfer unless actual prejudice or bias is demonstrated.

8. It is further contended that transfer of proceedings must be based on real hardship or inconvenience to the party seeking transfer. In the present case, no such hardship has been demonstrated by the respondent. On the contrary, the petitioner-wife would suffer greater hardship due to transfer of proceedings from Omerga to Osmanabad.

9. Despite service of notice, none has appeared for the respondent. This Court, therefore, proceeds to decide the matter on merits.

10. The petitioner is the wife who has instituted two subject-matter proceedings at Omerga. The reason recorded by the learned PDJ in allowing the application of the respondent is seen at paragraph 4 of the impugned order, which reads as follows :

“The apprehension of pressurizing witnesses at the hands of the father of the respondent expressed by the applicant cannot be over sighted.”

11. The sole ground for transferring the proceedings from Omerga to Osmanabad is the apprehension of the respondent that witnesses might be pressurized by the petitioner's father, who is an advocate by profession. I do not comprehend the logic adopted by the learned Principal District and Sessions Judge. It is quite possible for a litigant's close relative to be a

practicing advocate in the Court. If allegations are made against such an advocate regarding pressurization of witnesses or any party to the litigation, the grievance can be properly raised before the concerned Trial Court.

12. In any case, the mechanism for transferring the proceedings from one place to another does not permit the transfer of proceedings on such grounds. It is apparent that, while the prevailing law holds that hardship should be given paramount consideration when transferring proceedings, and women would generally be on the weaker side in such matters, the reasons recorded by the learned PDJ in passing the impugned order are not at all justifiable. Consequently, the petitioner has successfully made out a case under Article 227 of the Constitution of India for the exercise of supervisory jurisdiction by this Court.

13. Hence, I pass following order :

O R D E R

- a. The writ petition is allowed.
- b. The impugned order dated 01.08.2023 passed by the learned Principal District and Sessions Judge, Osmanabad is quashed and set aside.
- c. The concerned Courts shall proceed with HMP No.1 of 2018 at Omerga and PWDVA No.15 of 2016 at Omerga in accordance with law.
- d. The writ petition is disposed of.

[AJIT B. KADETHANKAR, J.]