

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

MISC. CIVIL APPLICATION (TR.) NO.76 OF 2018
(SAU RADHIKA PRANIT KOTHARI....VS.. PRANIT PRADEEP KOTHARI)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri S.A.Mohta, Advocate for Applicant.
Shri Dhiraj I. Jain, Advocate for Respondent.

CORAM : Z.A.HAQ, J.
DATED : SEPTEMBER 26, 2018.

By this application under Section 24 of the Code of Civil Procedure 1908, the applicant/wife prays that the proceedings of Petition No.A-239 of 2017 filed by the non-applicant/husband and pending before Family Court, Amravati be transferred to the Court of Civil Judge Junior Division, Digras, District : Yavatmal.

The facts on record show that the applicant had lodged complaint against the non-applicant with the Police Station, Digras on 10th September 2017 and then she filed application under the provisions of the Protection of Women from Domestic Violence Act, 2005 before the Magistrate at Digras on 19th September 2017. The applicant again lodged complaint against the non-applicant with the Superintendent of Police, Amravati on 30th November 2017.

The non-applicant filed petition under Section 9 of the Hindu Marriage Act before Family Court at Amravati on 20th September 2017. It appears that some unpleasant events have taken place in September 2017 which resulted in filing of complaints and proceedings by the parties against each other.

Be that as it may, the transfer of the proceedings is sought on the ground that it is inconvenient for the applicant to attend the proceedings before the Family Court at Amravati as she is required to travel a distance of about 100 kms. from Digras to Amravati.

At the time of hearing of this application, the learned advocate for the applicant submitted that the applicant is afraid of attending the proceedings before the Family Court at Amravati due to the threats received by her when she was at her matrimonial house earlier.

The learned advocate for the non-applicant has submitted that the proceedings under Section 9 of the Hindu Marriage Act cannot be tried by the Court of Civil Judge Junior Division and therefore, the prayer for transfer of the proceedings to the Court of Civil Judge Junior Division, Digras cannot be granted. Other allegations made by the applicant in the application are also refuted.

Section 9 of the Hindu Marriage Act, 1955 lays down that the petition praying for decree for restitution of conjugal rights can be filed before the District Court and the District Court has to try it. Section 3(b) of the Hindu Marriage Act, 1955 defines "District Court" as follows :

"3(b) "district Court" means, in any area for which there is a City Civil Court, that Court, and in any other area the principal Civil Court which may be specified by the State Government, by notification in the Official Gazette, as having jurisdiction in respect of the matters dealt with in this Act."

The applicant has not placed any material on record to point out that the State Government has notified the Court of Civil Judge Junior Division and has vested it with powers to entertain and try the petition under Section 9 of the Hindu Marriage Act, 1955. Apart from this, the grounds on which the transfer of petition is sought also cannot be accepted to transfer the proceedings from the competent Court having jurisdiction to entertain and try the petition to another Court.

In view of the above, I am not inclined to exercise jurisdiction under Section 24 of the Code of Civil Procedure.

The application is **dismissed**. In the circumstances, the parties to bear their own costs.

JUDGE

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