

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

MISC. CIVIL APPLICATION (TR.) NO. 598 OF 2019

Sau. Ranjana Jaiprakash Ghanbahadur(d/o Gopalrao Vyankat Chakranarayan)
 ..VS..

Shri Jaiprakash s/o Panjabrao Ghanbahadur

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

Court's or Judge's orders

 Shri A.K. Madne, Adv. for applicant.

Shri Gataytri Diwe, Adv. h/f Shri P.R. Agrawal, Adv. for non-
 applicant-sole.

CORAM : VINAY JOSHI, J.

DATED : 21st NOVEMBER, 2019

Heard.

This is wife's application seeking transfer of marriage petition in terms of Section 24 of Code of Civil Procedure to club the matrimonial proceedings in between herself and her husband. Precisely, the applicant-wife has filed a petition for restitution of conjugal right in terms of Section 9 of the Hindu Marriage Act, 1955 at Family Court, Nagpur. The second petition is filed by the non-applicant/husband for decree of divorce as per Section 13 of the Hindu Marriage Act, 1955 bearing Petition No.A-90 of 2019 which is pending at the Family Court, Amravati. The applicant-wife has stated about her personal inconvenience for traveling and attending proceedings at Amravati and therefore, has sought for transfer.

The non-applicant-husband resisted this petition by contending that applicant-wife's petition is frivolous.

Moreover, it is submitted that considering the road conditions and travel time, it is not difficult for wife to travel from Nagpur to Amravati and therefore, petition be rejected.

I have gone through the controversy, admittedly, applicant-wife has filed restitution petition at Nagpur Court on 25.03.2019 whilst thereafter non-applicant-husband has filed divorce petition at Amravati Court on 10.04.2019. Needless to say that, both proceedings are to be clubbed together rather be heard simultaneously, so as to avoid possibility of giving rise to conflicting unexecutable adjudication. The only aspect remains about the place where the proceedings are to be clubbed? The non-applicant-husband while resisting this application has relied upon the judgment of this Court in the case of **Supriya vs. Kamlesh 2018(3) ALL MR 195**. In said case, this Court has rejected the request of wife on the ground that the distance between Gondia and Nagpur is not much and there are good road conditions and wife can travel. The decision was based on the then facts like medical captivity of husband. I am unable to find any ratio *desi dendi* in said judgment.

Notably, applicant-wife is living at Nagpur and obviously she would be required to attend Amravati on the dates of proceedings. Generally, wife's convenience is to be looked, unless the other side has made out a special case to carve out exception. Nothing is urged on behalf of the husband to show that, he is captive by some illness or any other exigencies of such a nature which prevented him from traveling from Amravati to Nagpur.

The non-applicant-husband would submit that,

applicant-wife's petition for restitution is frivolous on the background that, she has earlier lodged First Information Report against him, alleging to have committed offenses punishable under Sections 377, 354-A, 354-B etc..

As a matter of fact, it is not the scope of transfer petition to make any comments on the genuineness or frivolous nature of the restitution petition. Always, it is left for the then Court namely Family Court to decide merits and demerits of both the cases.

In view of that, for avoiding conflicting decisions and for the sake of convenience of wife, the application deserves to be allowed by clubbing both the proceedings at Nagpur Court. Hindu Marriage Petition No. A-90 of 2019 pending on the file of Family Court, Amravati is withdrawn and is transferred to the court of Family Court, Nagpur, where wife's restitution petition is pending.

Misc. Civil Application stands allowed and disposed accordingly.

JUDGE

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