

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

MISC. CIVIL APPLICATION (TR.) NO.424/2021

Mrs. Kajal w/o Avinash Kondhave,
aged about 25 years, Occ. Household,
r/o Plot No. 51, Deepak Nagar,
Nari Road, Nagpur.

....APPLICANT

...V E R S U S...

Mr. Avinash s/o Mahadev Kondhave,
aged 37 years, Occ. Govt. Servant,
r/o House No. 17, Nagpur Road,
Near Shitala Mata Temple,
Seva Nagar, Yavatmal.

...NON APPLICANT

Ms P. N. Lakhani, Advocate for applicant.

CORAM:- V. M. DESHPANDE, J.
DATED :- 30.11.2021.

ORAL JUDGMENT

1. Rule. Rule is made returnable forthwith. Heard Ms Lakhani, learned counsel for applicant.

2. This is an application under Section 24 of the Code of Civil Procedure for transfer of Hindu Marriage Petition from the file of learned Judge, Family Court, Yavatmal to learned Judge, Family Court, Nagpur.

3. This Court (Coram: Pushpa V. Ganediwala, J.) on 30.08.2021 issued notice to the non applicant. In spite of service, the non applicant chose not to participate in the proceeding and he is not appearing in the present matter also.

4. Marriage between applicant and non applicant took place on 27.05.2017. From the wedlock, the couple is having one daughter. It is the submission of learned counsel for appellant that the daughter stays with the applicant. The learned counsel for the applicant submitted that due to harassment, the applicant was required to file proceedings for divorce against her husband at Family Court, Nagpur and accordingly, said were filed on 18.12.2020. The said proceedings were registered as Petition A-919/2020. It is the submission of learned counsel for applicant that notices in these divorce proceedings were issued by the learned Judge, Family Court and the husband has participated in the said proceedings inasmuch as he has filed Vakalatnama of his Advocate. It is further submission of learned counsel for the applicant that after filing of the divorce petition, the husband filed proceeding in the Court and the learned Judge, Family Court,

Yavatmal under Section 9 of the Hindu Marriage Act for restitution of conjugal rights. The said proceedings are registered as A-28/2021 and the applicant has received notice in the matter.

5. On oath, it is stated by applicant that she is not having any source of income to maintain herself or her daughter and she is wholly depending on her parents with whom she is staying at Nagpur. It is also stated on oath that non applicant is a Government servant. It is also stated on oath that as on today, the applicant is not being provided with maintenance by non applicant. In the backdrop of these submissions made on oath, it is the submission of the learned counsel for the applicant that it would be very difficult for the applicant to travel to Yavatmal from Nagpur.

6. Since the applicant is staying along with her parents with minor daughter and is not having any independent source of income and non applicant is not paying any amount of maintenance to her, the non applicant is already served with notice from the Family Court, Nagpur in divorce proceedings filed by the applicant, in my view, no prejudice would be caused to the

husband if the petition filed by him for restitution of conjugal rights is transferred from Yavatmal to Nagpur.

7. In view of above, following order is passed.

ORDER

(i) The application is allowed.

(ii) Petition No. A-28/2021 pending on the file of learned Judge, Family Court Yavatmal under Section 9 of the Hindu Marriage Act shall be transferred forthwith from the said Court to the Family Court, Nagpur where petition No. A/919/2020, filed by the applicant for divorce is pending.

(iii) Both the petitions; one filed by the applicant wife for divorce and the other filed by non applicant husband for restitution of conjugal rights, shall be tried and disposed of by one Court by clubbing those matters, after receipt of record and proceedings from Yavatmal Court. The learned Judge, Family Court, Nagpur shall issue notice to the non applicant-husband.

(iv) It is made clear that Court has not given any wieghtage to the allegations made by wife against the husband.

Rule is made absolute in the above terms. No order as to costs.

JUDGE

kahale

Digitally signed by YOGESH
ARVIND KAHALE
Signing Date: 02.12.2021
13:51