

**1**

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

**MISC.CIVIL APPLICATION (TRANSFER) NO.480 OF 2021**

Trupti alias Sonali w/o Rupesh Pujari,  
Age 28 years, occupation household,  
R/o Madholi Bazaar, taluka Warora,  
District Chandrapur. .... **Applicant.**

**:: V E R S U S ::**

Rupesh s/o Narhari Pujari,  
Age 37 years, occupation NIL,  
R/o Chaitanya Nagar,  
Opposite Mahadev Mandir,  
District Nanded. .... **Non-applicant.**

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Ms F.C.Badani, Counsel for the Applicant.  
None for the Non-applicant.

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**CORAM** : **V.M.DESHPANDE, J.**  
**DATE** : **NOVEMBER 16, 2021**

**ORAL JUDGMENT**

1. In spite of service of Notice of final disposal to the non-applicant issued by this Court (Coram : Nitin W.Sambre, J.) on 23.9.2021, the non-applicant chose not to appear before the Court. On 26.10.2021, this matter was listed before this Court and in order to give one chance to the non-applicant, the matter was adjourned to today. Today, when the matter is called out, nobody

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**2**

is appearing for the non-applicant nor the non-applicant in-person is appearing.

2. Heard learned counsel Ms F.C.Badani for the applicant. **RULE.** Rule made returnable forthwith. Heard finally.

3. By this application under Section 24 of the Code of Civil Procedure, the applicant is seeking transfer of Hindu Marriage Petition No.A-166/2021 pending on the file of learned Judge of Family Court at Nanded to learned Civil Judge Senior Division at Warora, district Chandrapur.

4. The present application under Section 24 of the Code of Civil Procedure is on affidavit. Contents in the application have remained uncontroverted because neither the non-applicant is appearing nor he has filed reply.

5. From the application, it is clear that marriage between the applicant and the non-applicant was solemnized on 26.12.2012 at Katariya Mangal Karyalaya at Warora, district Chandrapur. From their wedlock, they have two daughters aged about 9 and 5 years respectively and they are presently studying in Standard-3

**3**

and KG-II in Angel's School, Pawani (Mahdeli).

6. According to the applicant, the applicant was required to leave her matrimonial house because of constant torture, harassment, and physical assault on her by the non-applicant. From December 2019, she is residing at her parental house along with her daughters and she is wholly dependent on her parents. It is stated in the application that the applicant filed proceeding under Section 12 of the Protection of Women from Domestic Violence Act, 2005 before learned Judicial Magistrate First Class at Warora, district Chandrapur. The said proceeding is registered as P.W.D.V.A. No.18/2021. A copy of the said proceeding is also annexed with the application. In the present application, on oath, a statement is made that Notice was issued to the husband and the husband appeared in the said proceeding.

7. Be that as it may, according to learned counsel for the applicant, in order to give a counter blast to proceeding filed under Section 12 of the Protection of Women from Domestic Violence Act, 2005 before learned Judicial Magistrate First Class at Warora, district Chandrapur, the non-applicant filed proceeding before

**4**

Family Court at Nanded under Section 9 of the Hindu Marriage Act, 1956 for restitution of conjugal rights and said proceeding is registered as Hindu Marriage Petition No.A-166/2021.

8. This Court need not go into merits and demerits of proceeding filed under Section 12 of the Protection of Women from Domestic Violence Act, 2005 before learned Judicial Magistrate First Class at Warora, district Chandrapur and proceeding filed under Section 9 of the Hindu Marriage Act, 1956 for restitution of conjugal rights before Family Court at Nanded since it will cause prejudice to parties. Suffice to say that the applicant is solely dependent on her parents and she is residing along with them at Warora, district Chandrapur and proceeding is filed under Section 9 of the Hindu Marriage Act, 1956 for restitution of conjugal rights before Family Court at Nanded which is approximately 330 kilometers away from Chandrapur. Obviously, the applicant will be required to incur expenses if the proceeding is allowed to continue at Nanded.

9. In view of fact that the non-applicant is already appearing in proceeding filed against him under Section 12 of the

**5**

Protection of Women from Domestic Violence Act, 2005 before learned Judicial Magistrate First Class at Warora, district Chandrapur, no prejudice will be caused to the non-applicant if proceeding filed by him before Family Court at Nanded under Section 9 of the Hindu Marriage Act, 1956 for restitution of conjugal rights is ordered to be transferred from Nanded to Warora, district Chandrapur. It will be always open for the non-applicant to make a request to both Courts to keep both matters on very same day so that he will not require to travel on two different dates at Warora.

10. In this view of the matter, since statements of fact made on oath are remained uncontroverted and looking to fact that proceeding against the non-applicant is already pending at Warora and the applicant is without any maintenance, in my view, interest of justice allows me to pass following order:

**ORDER**

(1) Misc.Civil Application (Transfer) No.480 OF 2021 is allowed.

(2) Hindu Marriage Petition No.A-166/2021 pending on the file of

**6**

learned Judge of Family Court at Nanded is hereby ordered to be transferred from the said Court to the file of learned Civil Judge Senior Division at Warora, district Chandrapur.

(3) After receipt of record and proceedings of Hindu Marriage Petition No.A-166/2021 from learned Judge of Family Court at Nanded, learned Civil Judge Senior Division at Warora, district Chandrapur shall issue Notice to the non-applicant and shall decide Hindu Marriage Petition No.A-166/2021 in accordance with law.

The miscellaneous civil application is disposed of accordingly. Rule is made absolute in aforesaid terms. No costs.

**JUDGE**

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