

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

MISC. CIVIL APPLICATION NO. 329 OF 2021

Dr. Mayuri w/o Eshan Nerkar and another vs. Dr. Eshan s/o Narendra
Nerkar

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. Purushottam Patil, Advocate for applicants.
Ms. Ujjwala Patil, Advocate for sole respondent.

CORAM : MANISH PITALE J.

DATE : 20/04/2022

By this application, the applicant (wife) is seeking transfer of petition for restitution of conjugal rights filed by the respondent (husband) from the Family Court, Nashik to Family Court at Nagpur.

2. The parties got married on 23/02/2014, at Nagpur. It appears that due to matrimonial discord, the parties are living separately. The applicant is residing at Bangalore, while the respondent is residing at Nashik. Both are well educated doctors. There is a minor son from the said wedlock born in the year 2016, who is in the custody of the applicant at Bangalore.

3. The respondent filed the aforesaid petition for restitution of conjugal rights at Nashik in November 2020. It appears that thereafter the applicant has filed an application for grant of maintenance for the minor child at Nagpur. It is submitted by the learned counsel for the applicant that although none of the parties are residing at Nagpur, insofar as the applicant is concerned, it would be more convenient for her to attend the proceedings at Nagpur, considering the flight connectivity between Bangalore and Nagpur is much better than connectivity between Bangalore and Nashik. There are direct flights from Bangalore to Nagpur, while such facility is not available for Bangalore to Nashik.

4. It is also submitted that since the respondent is already facing two proceedings at Nagpur, it would not be inconvenient for him if the petition for restitution of conjugal rights is transferred from Nashik to Nagpur.

5. It is also submitted that in terms of Section 19 of the Hindu Marriage Act 1955, in the facts and circumstances of the present case such a petition of restitution of conjugal rights under Section 9 of the aforesaid Act would be maintainable at Nagpur for

the reason that the marriage between the parties took place at Nagpur. According to the learned counsel for the applicant no other clauses of the said provision would be applicable for the reason that the parties last resided together at Bangalore.

6. The learned counsel appearing for the respondent has opposed the present application. It is submitted that the aforesaid two proceedings initiated at Nagpur were filed after the petition for restitution of conjugal rights was filed by the respondent. It is further submitted that the parents of the applicant are presently residing at Aurangabad and her brother is residing in Pune and therefore, the grounds raised in the application about convenience at Nagpur are not sustainable. On this basis, it is claimed that the present application ought not be granted.

7. This Court has perused the material on record and heard learned counsel for the rival parties. It is settled law that the convenience of the wife is a major consideration in such applications seeking transfer of proceedings from one place to the other. In the present case, although the applicant is well educated and financially independent, in the context of convenience, the geographical location of the two

places i.e. Nashik and Nagpur needs to be taken into consideration. It cannot be disputed by the respondent that the connectivity between Bangalore and Nagpur in terms of direct flights and trains is much better than the connectivity between Bangalore and Nashik. There is no direct flight from Bangalore to Nashik and hence, Nagpur can be said to be more convenient for the applicant.

8. It is an admitted position that the applicant is a doctor working at Bangalore and therefore, it would be convenient for her to attend proceedings initiated by the respondent at a place where there is better connectivity. The fact that the minor son is in the custody of the applicant can also not be ignored. Therefore, purely from the point of view of convenience, the applicant has made out a case for transfer of the proceedings. This Court refrains from making any comment on the contention raised on behalf of the applicant insofar as Section 19 of the aforesaid Act is concerned.

9. In view of the above, the application is allowed.

10. The petition for restitution of conjugal rights bearing Petition No.A-493/2020 filed by the

respondent is transferred from the Family Court at Nashik to the Family Court at Nagpur.

11. Consequently, the Family Court at Nashik is directed to immediately transmit the record to the Family Court at Nagpur.

12. It is expected that the parties shall co-operate with the Family Court at Nagpur for expeditious disposal of the aforesaid petition.

JUDGE