

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

MISC. CIVIL APPLICATION NO. 419 OF 2022

Sadaf Sheikh __ Vs. __ Saalim Sheikh

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

Court's or Judge's orders

Mr. S.Mujibuddin, Advocate for applicant
Mr. R.N.Ghuge, Advocate for non-applicant.

CORAM : AVINASH G. GHAROTE, J.
DATE : 16/09/2022

1] Heard Mr. Mujibuddin, learned counsel for the applicant and Mr. Ghuge, learned counsel for the non-applicant.

2] The application seeks to transfer Petition No. D-66/2022 filed by the non-applicant under Section 7 of the Guardian and Wards Act before the Family Court No.5 at Bandra to the Family Court No. 4 at Nagpur.

3] Mr. Ghuge, learned counsel for non-applicant vehemently opposes the transfer on the ground that in April, 2021, the applicant surreptitiously left the matrimonial home along with the children and falsely instituted proceedings under Section 125 of Cr.P.C. on behalf of two children at Nagpur. It is further contended that without the knowledge of the non-applicant, the children have also been provisionally admitted in Center Point School, Nagpur, without taking transfer certificate from Billabong High International School, Andheri, in which they were studying. It is contended that the non-

applicant is Oncology Surgeon and it would be difficult for him to come down to Nagpur time and again to attend the proceedings. It is also contended that the non-applicant has old aged ailing mother, suffering from paralysis, who has also to be taken care of. It is also contended that the Applicant is residing in a joint family at Nagpur and therefore it would be more convenient for the applicant who is also an anesthesiologist by profession and is working at Kingsway Hospital, Nagpur, to fly to Mumbai at the cost of the non-applicant and attend the proceedings at Mumbai.

3] It is not in dispute that proceedings under Section 125 of Cr.PC. have been instituted at Nagpur by the applicant on behalf of the minor children, in which the non-applicant has been served and would be appearing. That being the position, in view of what has been held in **D.Raja Rajeshwari vs. R. Satish Kumar, (2022) 2 SCC 329**, it would be appropriate for the Petition No. D-66/2022 to be dealt with by the Family Court at Nagpur. Any inconvenience to the non-applicant can be addressed by ensuring that the physical presence of the non-applicant is kept to the minimum and as far as possible by Video Conferencing as the Family Court, Nagpur has such facilities available.

4] In view of the above, Petition No.D-66/2022 pending on the file of Family Court No. 5, Bandra is hereby transferred to the Family Court No.4, Nagpur, in which the proceedings under Section 125 of Cr.PC are

instituted by the applicant for the children is already pending.

5] The parties through counsel shall appear before the learned Family Court No.4, Nagpur on 26.9.2022 and place a copy of this order before it to apprise it of the same. The non-applicant shall appear through counsel before the Family Court No.5 at Bhandra on 22.9.2022 and place a copy of this order before the Court to apprise it of the same, so as to enable it to transmit the R&P to the Family Court, Nagpur.

6] It is made clear that the personal appearance of the non-applicant in the proceedings before the learned Family Court, Nagpur, shall not be insisted upon and whenever such appearance is required, the same can be ensured through Video Conferencing, as such facilities are available with the Family Court, Nagpur.

6] The Application is allowed in above terms.
No costs.

JUDGE

Rvjalit