

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

MISC. CIVIL APPLICATION (TR.) NO. 485 OF 2022

APPLICANT : Sau. Ruchita W/o Jayram Bihade, Age –
26 Years, Occ. - Nil, R/o. C/o. Shri Datta
Nasre, Athawale Layout, Waghapur,
Yavatmal. Tah. And Dist. Yawatmal.

//VERSUS//

RESPONDENT : Jayram S/o Vishnupant Bihade, Age – 32
Years, Occ. - Service, R/o. Krishna Puram
Colony, Sector – 2 Jail Road, Khandwa,
Madhya Pradesh – 450001.
Presently residing at C/o. Shri P.B.
Dhamande, 37, Hanuman Nagar,
Nagpur – 440024.

Mr. P.S. Kadam, Advocate for the Applicant.

CORAM : **ABHAY AHUJA, J.**
DATE : **16th NOVEMBER, 2022.**

ORAL JUDGMENT

This is an application filed by the Applicant-Wife under Section 24 of the Code of Civil Procedure, 1908 (for short “CPC”) seeking transfer of Hindu Marriage Petition No.A-608/2022, filed by the Respondent-Husband in the Family Court

at Nagpur to the Court of Civil Judge, Senior Division at Yavatmal.

02] Brief facts are that the marriage between the Applicant-Wife and the Respondent-Husband was solemnized on 19th June, 2021 at Athawale Layout, Waghapur, Yavatmal. After the marriage, the Applicant-Wife started residing with the Respondent-Husband in joint family at Khandawa. However, soon thereafter, there were quarrels between the Applicant-Wife and Respondent-Husband during some of which, the Respondent physically and mentally assaulted the Applicant. It is the case of the Applicant that the Respondent and his relatives pressurized her to bring dowry from her parental house, which requests were also complied with. However, despite the same, on 12th January, 2022, the Respondent drove the Applicant from his house and did not allow her to come back inside the house. Therefore, the Applicant had to leave her matrimonial home for Yavatmal and is residing with her parents there.

03] It is submitted that the Applicant was living in fear of her Husband, but with some hope that some good sense would prevail and that his behaviour towards her would change. However, since no such signs of change were noticed, she reported

the Respondent and his relatives at Police Station, Lohara, District Yavatmal on 2nd May, 2022. That after enquiry, an FIR came to be registered on 8th July, 2022 under Section 498-A of the Indian Penal Code. It is submitted that thereafter on 18th July, 2022, the Respondent-Husband has filed the subject petition against the Applicant before the Family Court at Nagpur under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights, for which, the Applicant has received summons.

04] Mr. Kadam, learned counsel for the Applicant would submit that pursuant to the FIR, the relations between the Applicant's family and the Respondent's family is so strained that now it will not be possible for them to stay together. He submits that the Applicant has filed domestic violence proceedings before the Judicial Magistrate First Class, Yavatmal on 29th October, 2022.

05] Learned counsel also submits that the Applicant has a problem of motion sickness, due to which, she cannot travel from Yavatmal to Nagpur to attend to the said matter. He submits that the Applicant is fully dependent on her parents for her upkeep and does not have her own financial resources. He also submits that the distance between Nagpur and Yavatmal is 180 kms and

taking such an arduous journey of about 4 hours will obviously cause her serious health issues due to her problem of motion sickness. He, therefore, submits that it would not only cause undue hardship, but also be inconvenient for her to travel to Nagpur as and when the matter is listed for hearing. He submits that no such inconvenience or hardship would be caused to the Respondent-Husband as he is employed in the IT Industry; that the Respondent in any case has to come to Yavatmal to attend the proceedings initiated pursuant to the FIR that was registered under Section 498-A of the IPC as well as the domestic violence proceedings that have been recently instituted by the Applicant against him. Learned counsel submits that the stage of the proceedings before the Family Court at Nagpur was for the reply as on 18.08.2022 when *ad interim* stay was granted by this Court and the same can be proceeded with from that stage after the matter is transferred to Yavatmal.

06] Learned counsel submits that despite service on the Respondent sole, he is neither present nor represented by any counsel in the matter. He, therefore, submits that the proceedings pending before the Family Court at Nagpur be transferred to the Court of Civil Judge, Senior Division, Yavatmal.

07] I have heard learned counsel for the Applicant and with his able assistance, I have perused the record and proceedings in the matter.

08] It is a fundamental principle for exercise of power under Section 24 of the CPC that ends of justice should demand the transfer of the suit, appeal or other proceeding. That it is the undue hardship that would be caused to the wife that needs to be weighed. That given the prevailing socioeconomic paradigm in the Indian society, generally, it is the wife's convenience which must be looked at while considering transfer in matrimonial matters.

09] Paragraph 9 of a recent decision dated 18th July, 2022 of the Apex Court in the case of N.C.V. Aishwarya Vs. A. S. Saravana Karthik Sha, in Civil Appeal No(s).4894 of 2022 (arising out of S.L.P.(C) No(s). 16465 of 2021 (Coram: S. Abdul Nazeer; J., J.K. Maheshwari; J) is pertinent and is quoted as under:

“9. The cardinal principle for exercise of power under Section 24 of the Code of Civil Procedure is that the ends of justice should demand the transfer of the suit, appeal or other proceeding. In matrimonial matters, wherever Courts are called upon to consider the plea of transfer, the Courts have to take into consideration the economic soundness of both the parties, the social strata of the spouses and their behavioural pattern, their standard of life prior to the

marriage and subsequent thereto and the circumstances of both the parties in eking out their livelihood and under whose protective umbrella they are seeking their sustenance to life. Given the prevailing socioeconomic paradigm in the Indian society, generally, it is the wife's convenience which must be looked at while considering transfer.

(emphasis supplied)

10] This is a case, as stated above, where the Applicant-Wife has alleged that she was driven out of her matrimonial home at Khandawa. That apart from the physical and mental torture that was meted out to her, excessive demands of dowry were made and that therefore, she was compelled to file proceedings under Section 498-A, which are pending in Yavatmal. That as stated by the Applicant's counsel, the proceedings under the Domestic Violence Act have also been instituted by the Applicant before the Judicial Magistrate First Class, Yavatmal. That the Applicant is unemployed and financially dependant on her aged parents as she is forced to stay separately. That the Applicant purportedly suffers from motion sickness and to travel 180 kms to Nagpur for attending to the matter no doubt will cause undue hardship apart from inconvenience. The Respondent-Husband stated to be employed with the IT industry, has the wherewithal to attend to the matter at Yavatmal. Besides, he any ways would require to visit

Yavatmal to attend to the proceedings arising out of the FIR as well as the domestic violence proceedings initiated by the Applicant. In my view, therefore, the balance of convenience is in favour of the Applicant and undue hardship would be caused to the Applicant-Wife, if the proceedings pending in the Court at Nagpur are not transferred to Yavatmal. But, no such hardship or inconvenience would be caused to the Respondent as he is stated to be employed in the IT Industry and in any case, the Respondent has to attend the proceedings under Section 498-A as well as the domestic violence proceedings at Yavatmal.

11] As observed above, it is the convenience of the wife that has to be seen at the time of considering such transfer petitions. It will not only be inconvenient for the Applicant to travel from Yavatmal to Nagpur, but also cause undue hardship to her, if she has to travel every time to attend to the matter at Nagpur.

12] Therefore, in my view, the ends of justice would be served, if the Hindu Marriage Petition No.A-608/2022 pending in Nagpur is transferred to Yavatmal.

13] In the circumstances, this Court is inclined to allow the application of the Applicant in terms of prayer Clause (i).

14] Let the proceedings being Hindu Marriage Petition No.A-608/2022 under Section 9 of the Hindu Marriage Act, 1955 pending before the Family Court No.2, Nagpur be transferred to the Court of Civil Judge, Senior Division at Yavatmal.

15] It is made clear that, if a video conferencing facility is available in the Court at Yavatmal, then on dates when the physical presence of the Respondent-Husband is not required, he may be permitted to attend the proceedings through video conferencing, upon an appropriate application made to the Court at Yavatmal in that behalf.

16] The Application stands allowed in the above terms.

17] All to act on an authenticated copy of this decision.

(ABHAY AHUJA, J.)