

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

MISC. CIVIL APPLICATION (TR.) NO. 643 OF 2021

Smt. Shital w/o Adiya Jibhkate

..VS..

Shri Aditya s/o Kamlakar Jibhkate

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

Court's or Judge's orders

Ms. Sanchita Sontakke, Advocate a/w Shri Karan Gajra, Advocate
for the applicant.

CORAM : MANISH PITALE, J.

DATED : 23/03/2022.

By this application, the applicant (wife) is seeking transfer of Divorce Petition filed by the respondent (husband) before the Family Court at Nagpur to the Family Court at Akola.

2. Notice was issued in this application and the respondent was served. There is an affidavit-in-reply filed on behalf of the respondent opposing the present application.

3. Ms. Sanchita Sontakke learned Counsel appearing for the applicant submits that the transfer of the proceedings is sought on the ground that the applicant has initiated three proceedings before the competent Court at Akola, where the respondent is required to appear and face the proceedings. It is further submitted that these proceedings were initiated prior in point of time as compared to the Divorce Petition filed by the respondent-husband in the Family Court at Nagpur. On this basis, it is submitted that, since the respondent would be participating in three proceedings initiated at Akola, the Divorce Petition filed in the Court of Nagpur, ought to be transferred at Akola. It is further submitted that the applicant is living with her parents at

Akola and that she has no source of income. It is also pointed out that a minor child aged about 2 years born from the wedlock, is in the custody of the applicant at Akola and that, it would be extremely inconvenient for the applicant and the minor child, if the proceedings at Nagpur are not transferred to Akola.

4. As none appeared on behalf of the respondent, this Court has perused the affidavit in reply. The respondent has opposed the present application, by stating that the applicant can certainly visit Nagpur for attending the Divorce Petition as she would not be required to travel to Nagpur on each date. There are certain statements made in respect of the manner in which the applicant allegedly inflicted emotional trauma on the respondent, but the same is irrelevant, for consideration the present application. This Court is of the opinion that since the applicant has already initiated three proceedings in the competent Courts at Akola earlier in point of time, as compared to the Divorce Petition filed by the respondent in the Family Court at Nagpur, a strong ground is made out for transferring the proceedings. The respondent would be facing the proceedings for maintenance, as also the complaint under the provisions of the Protection of Women from Domestic Violence Act, 2005 and the application for Restitution of Conjugal Rights at Akola and therefore, transfer of the Divorce Petition filed by the husband subsequently, from the Family Court at Nagpur to the Family Court at Akola, would be in the interest of justice and it would not cause any particular inconvenience to the respondent.

5. On the other hand, if the proceeding is not transferred, the applicant is likely to face prejudice for the reason that she is dependent on her parents at Akola, and she

also has to look after her minor child, who is only about two years old.

6. In view of the above, the present application is allowed. Accordingly, the Divorce Petition filed by the respondent before the Family Court at Nagpur bearing Petition No. A-983 of 2021, is transferred from the Family Court at Nagpur to the Family Court at Akola.

7. Accordingly, the Family Court at Nagpur is directed to immediately transfer the records to the Family Court at Akola, to facilitate further proceedings in the matter.

JUDGE

Trupti