

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

MISCELLANEOUS CIVIL APPLICATION NO. 69 OF 2023

Mrs. Nikita Ram Ochani. ... Applicant
v/s.
Shri Ram Prakashchandra Ochani. ... Respondent

...
Ms. Sangeeta S. Vaidya, for the Applicant.

Mr. Kuldeep U. Nikam a/w. Surajsingh Malas a/w. Prasad Avhad,
for respondent.

...

CORAM : KAMAL KHATA, J.

DATED : 26TH JULY 2023.

P.C. :

1. This Miscellaneous Civil Application is filed by the applicant wife under Section 24 of the Civil Procedure Code, 1908 to transfer Divorce Petition bearing No. P.A. 288 OF 2021 which is pending before the Principal Family Court Judge, Nagpur to the Family Court, Pune.

2. The Applicant's case is that her marriage was solemnized on 4/6/2015 at Nagpur. Out of a wedlock, a girl child born on 13/8/2016. Due to matrimonial differences, the applicant left matrimonial home on 20th August, 2016. The Respondent filed divorce proceedings on 21st February, 2021 before Principal Judge, Family Court at Nagpur. On the other hand, the applicant

has filed petition for restitution of conjugal rights before the Family Court at Pune on 1st March, 2021.

3. The learned Counsel for the applicant submits that it would be difficult for the applicant to travel to Nagpur as she is working at Pune. To travel to Nagpur with or without child would cause great hardship to the applicant. It is therefore, submitted that the matter be transferred from Family Court, Nagpur to Family Court, Pune.

4. On the other hand, learned Counsel for the respondent submitted that in the proceeding at Family Court at Nagpur, evidence of the respondent is apparently completed. Learned Counsel for the respondent submits that the respondent is willing to pay travel and accommodation expenses to the applicant. Learned Counsel for the respondent submits that the applicant's work is shifted to Mumbai and therefore, the application should not be allowed.

5. The law with respect to transfer of proceedings, particularly matrimonial disputes, is no longer *res-integra*. The ratio laid down by the Hon'ble Supreme Court in the cases of ***Sumita Singh v. Kumar Sanjay***¹ and ***N.C.V. Aishwarya v. A. S. Saravana Karthik Sha² reported in*** is that in matrimonial disputes, it is the

¹ (2001) 10 SCC 41 : AIR 2002 SC 396

² 2022 SCC OnLine 1199

convenience of the wife which is preferred over the convenience of the husband while considering the transfer of a case from one Court to another, specially in a case where there is minor child. In this case, the daughter is aged only around 5 years old. It would cause tremendous inconvenience for the applicant to travel with or without the child and in my view, this would be the sufficient ground to allow the application.

6. In my view, perhaps, if the matters are transferred and heard together, would help both the applicant as well as respondent to dispose of their matters at the earliest. In my view, merely offering the applicant charges to visit Nagpur and or accommodation would not alone suffice in this case. In view thereof, I am inclined to allow this application.

7. In view of the above I allow the transfer Application as follows:

- i. The Application is allowed in terms of prayer clause (b).
- ii. The proceedings and application made in Petition No. P.A. 288/2021 pending before the Principal Family Court, Nagpur be stayed pending transfer; and be transferred to the Family Court, Pune.
- iii. The Registry shall forward a copy of this order to the Principal Family Court, Nagpur, with instructions to forthwith transmit all the records of Petition No. P.A. 288/2021 between the Respondent and Applicant to the

Family Court, Pune preferably within 4 weeks from the receipt of this order.

iv. The Family Court, Pune shall on receipt of the records of Petition No. P.A. 288/2021, fix a date preferably within 3 weeks and issue notice to the parties for proceeding with the matter.

v. Family Court, Pune may consider granting permission to the respondent and also permit the counsel to appear in court through video conferencing facility when such application is made to save the respondent from inconvenience and expense if it is feasible and their physical presence is not inevitable.

8. All concerned to act on the authenticated copy of this order.

(KAMAL KHATA, J.)