

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

MISC. CIVIL APPLICATION (TR) NO. 77 OF 2023

Meena w/o Ratnakar Sahare Vs Ratnakar s/o Ishwardas Shahare,

WITH

MISC. CIVIL APPLICATION (TR) NO. 606 OF 2022

Ratnakar s/o Ishwardas Shahare V/s Meena w/o Ratnakar Sahare,

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri C.G. Baraparte, Advocate for the applicant. | (For MCA No.77/2023

Shri A.D. Patil, Advocate for the non-applicant. |

Shri Amol D. Patil, Advocate for the applicant. | (For MCA No. 606/2022)

Shri C.G. Barapatre, Advocate for the non-applicant. |

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 07/02/2023.

1. Heard.
2. By preferring these applications, the applicant/husband Ratnakar s/o Ishwardas Shahare as well as wife Meena Ratnakar Shahare both are seeking transfer of the petitions filed by them respectively from Nagpur to Gadchiroli and Gadchiroli to Nagpur.
3. The Misc. Civil Application No. 606/2022 is filed by the husband/applicant for seeking transfer of proceedings filed by the wife/non-applicant in the Court of Judicial Magistrate First

Class, Gadchiroli bearing PWDVA No. 38/2021 to any Competent Court at Nagpur on the ground that the applicant/husband is residing along with his 7 Years Son and 80 years of Mother. He further raised the ground that, Gadchiroli is 175 km approximately and he has to spend whole day to attend the proceedings. In his absence, there is nobody to look after his son as well as old aged mother and therefore, the matter be transferred to Nagpur from Gadchiroli.

4. He further raised the ground that non-applicant/wife had already filed an application for custody of the Ward in the Family Court, Nagpur and therefore, she is visiting at Nagpur. Hence, considering the same, the application pending before the Judicial Magistrate First Class, Gadchiroli be transferred to any Competent Court at Nagpur.

5. On the other hand, the wife has filed application bearing Misc. Civil Application (MCA) No. 77/2023 for seeking transfer of matrimonial proceedings bearing Petition No. A-534/2021, pending before the Family Court, Nagpur to Competent Court at Gadchiroli along with petition filed by her under the provisions of the Guardianship Wards Act, 1890.

6. As per the contention of the applicant/wife that distance between the Gadchiroli and Nagpur is more than 175 Km. She is in Government Service. She has to obtain leave to attend the proceedings at Nagpur.

7. On the other hand, if the petitions are transferred to Gadchiroli, she can manage to attend the proceedings conveniently and therefore, the proceedings pending before the Family Court, Nagpur be transferred to Competent Court at Gadchiroli.

8. Heard learned Advocate Shri A.D. Patil, in Misc. Civil Application (MCA) No. 606/2022 and learned Advocate Shri C.G. Barapatre in Misc. Civil Application (MCA) No. 77/2023.

9. Learned Advocate Shri A.D. Patil reiterated the contentions as raised in the application, in addition to that he invited my attention towards prayer clause made by the applicant/wife in her Domestic Violence Proceedings bearing No. 38/2021, wherein she has prayed for monetary relief to the extent of Rs. 35,000/- for the education and maintenance of the child. She, further made a prayer that there is possibility of her transfer from Gadchiroli to Nagpur.

10. Learned advocate further submitted that, by this prayer, it is clear that she is willing to stay at Nagpur. The child of both the applicants is already residing with his father at Nagpur. Therefore, Nagpur is the convenient place than Gadchiroli.

In support of his contention, he placed reliance upon the order passed at the Principal Seat at Bombay in Misc. Civil Application (MCA) No. 498/2022, wherein the aspect of transfer of domestic violence proceedings to the Family Court is considered, and it is held that due consistent views of various Single Judges of this Court that it is not necessary to refer the proceedings under the Domestic Violence Act to the Larger Bench because the provision of law on this point appears to have been settled by the aforesaid decision.

11. It is further held that considering the pleading of the parties in both the proceedings pending before two different Courts, there is possibility of conflict of verdicts by the two Courts and by transferring the proceeding from one Court, the same will amount to reduce of the burden of one Court resulting in saving of Judicial time. Moreover, the transfer of proceedings will not cause inconvenience to the wife as she will travel

outside the Pune, and by observing the aforesaid reasons, the Misc. Civil Application is allowed.

12. On the other hand, learned advocate Shri C.G. Barapatre for the applicant/wife submitted that, the applicant is in Government Service, she has already lost her two brothers and her parents are old aged persons. The applicant has to obtain leave to attend the proceedings and spend whole day in attending the court proceedings.

13. On the contrary, if the proceedings is transferred to Gadchiroli, then it will be easy for her to manage and attend the proceedings. In view of that, the matrimonial proceedings and custody proceedings pending before the Family Court, Nagpur be transferred to Gadchiroli.

14. Considering the rival submissions of both the parties, the issue involved in the present applications is that, which is the convenient place for both the parties to attend the proceedings.

15. In the recent judgment of the Hon'ble Supreme Court of India in the case of *N.C.V. Aishwarya vs A.S. Saravana Karthik*

*Sha*¹ has dealt with the issue regarding the convenience of the parties and observed as thus:-

“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 socio-economic paradigm in the Indian society, generally, it is the wife’s convenience which must be looked at while considering transfer.”

16. In the present case, the facts are little bit different, as the applicant/wife - Meena Ratnakar Shahare is serving as a Government Servant, whereas the non-applicant is not in Service at the same time, the non-applicant/husband is shouldering the responsibility of small child of 7 years, the distance between the two places is more than 175 km. Admittedly, the applicant/wife had filed an application before the Family Court, Nagpur for obtaining the custody of the

1 AIR 2022 SC 4318

child. The petition which is filed before the Family Court, Nagpur for obtaining the custody of the child under the provisions of the Guardianship and Wards Act, 1890 shows that at the time of filling of the said application she was residing at Gadchiroli. Her contention in the Domestic Violence Proceedings also shows that she was under the impression that her transfer can be effected at Nagpur and therefore, she had claimed relief of share house. She is attending the proceeding at Nagpur. Being the Government Servant, it is not difficult for her to travel all alone from Gadchiroli to Nagpur. As she is shouldering the official responsibility and carrying the said official responsibility, therefore, her contention that she is unable to attend the proceedings at Nagpur is not accepted.

17. On the other hand, the contention of the learned advocate for the non-applicant/husband that he is shouldering the family responsibility as the son of both of them is residing with him. The son is of 7 years old who needs constant attention of the parents. However, the father is only looking after him and therefore, the child needs the protective umbrella of father during day to day affairs. If the proceedings pending in

the Family Court, Nagpur is transferred to Gadchiroli, definitely the education of the child would be effected, due to the absence of father in the house. Considering the mother of the non-applicant is 80 years old, she is unable to look after the child. It is crystal clear that, there is no other persons in the house to look after that child.

18. On the other hand, from the prayers made by the applicant/wife clarifies that, she is attending the proceedings at Nagpur and there is no inconvenience for her to attend the proceedings at Nagpur. Moreover, she can request for her transfer to Nagpur, considering her child is residing at Nagpur and better education facilities are also available at Nagpur for the education of the child. So, considering the welfare of the child no inconvenience will be caused to the applicant/wife, if the matter is transferred to Nagpur because Nagpur is the most convenient place for both the parties.

19. It will be convenient for both the parties, as already two other proceedings are pending before the Family Court, Nagpur, if the third proceedings pending before Judicial Magistrate First Class Gadchiroli is transferred to Family Court Nagpur, then all

the proceedings would be decided by one and the same Court, which will avoid the conflict of the decision and multiplicity of the proceedings.

20. In view of that, as already two proceedings are pending before the Family Court Nagpur, it will be convenient to transfer the Domestic Violence Proceedings pending before the Judicial Magistrate First Class, Gadchiroli to Family Court, Nagpur. Accordingly, I pass the following order:

- a) The Misc. Civil Application No. 606/2022 deserves to be **allowed**.
- b) The Domestic Violence Proceedings bearing PWDVA No. 38/2021 pending in the Judicial Magistrate First Class, Gadchiroli be transferred to Family Court, Nagpur.
- c) The Misc. Civil Application No. 77/2023 deserves to be **rejected**.
- d) Parties to appear before the Family Court, Nagpur on 01/03/2023.

JUDGE