

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

MISC. CIVIL APPLICATION (TR) NO.264/2022

**Mrs.Laxmi @ Bharti w/o Nilesh Belorkar (Ms.Laxmi @ Bharti d/o Rajendra
Mahorkar**

..VS..

Mr.Nilesh @ Vaibhav s/o Madhukar Belorkar

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

Court's or Judge's Order

.....
Shri S.R.Chakravarti, Counsel for the Applicant/Wife.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 23/02/2023

1. By this application, the applicant/wife seeks transfer of Hindu Marriage Petition No.A-211/2021, filed by the non-applicant/husband, pending before learned Principal Judge, Family Court at Nagpur to learned Judge of the Family Court at Amravati.

2. Learned counsel Shri S.R.Chakravarti for the applicant/wife submits that the applicant is legally wedded wife of the non-applicant/husband. Their marriage was solemnized on 4.6.2014 at Amravati. After the marriage, she resumed cohabitation with the non-applicant/husband. However, she was not treated well and, therefore, she was constrained to leave her matrimonial house. After she left her matrimonial house, the non-applicant/husband has not made her available any monetary provision for her livelihood. She is staying at the

mercy of her parents at Amravati. Her father is from weaker section and has no source of income and, therefore, she is unable to bear expenses of litigation. She is residing at village Kathoba, post Sarsi, tahsil Nandgaon Khandeshwar, district Amravati. The distance between the place where she resides and Nagpur is more than 250 kilometers. Her father is old aged. There is nobody to escort her to Nagpur to attend proceedings. According to learned counsel for the applicant/wife, the applicant/wife has preferred divorce proceeding at Amravati and the same is still pending and the non-applicant/husband filed petition for restitution of conjugal rights and the same is also pending at Nagpur. If proceeding filed by the non-applicant/husband at Nagpur is transferred to Amravati, both proceeding can be disposed of by the same Court. There would not be any conflicting decision. Hence, she prays that the proceeding filed by the non-applicant/husband be transferred to learned Judge of the Family Court at Amravati.

3. Though Notice of this application is served upon the non-applicant/husband, he failed to appear before the Court. Initially, the matter was sent to Mediator for mediation. However, the mediation failed.

4. Heard learned counsel Shri S.R.Chakravarti for the applicant/wife and perused the application.

5. Learned counsel Shri S.R.Chakravarti for the applicant/wife reiterates contentions as pleaded in the application. He submits that her father is from weaker section and has no source of income and, therefore, she is unable to bear expenses of litigation. She is residing at village Kathoba, post Sarsi, tahsil Nandgaon Khandeshwar, district Amravati. The distance between the place where she resides and Nagpur is more than 250 kilometers. Her father is old aged. There is nobody to escort her to Nagpur to attend proceedings and, therefore, it is difficult for the applicant/wife to travel from her village to Nagpur. He submits that learned Judge of the Family Court at Amravati has already fixed the matter for evidence. He, therefore, prays that the application be allowed.

6. It is a well settled principle of law that while considering applications for transfer, convenience of wife is to be looked into. Recently, the issue of inconvenience has been dealt with by the Honourable Apex Court in the case of NCV Aishwarya vs. A.S.Saravana Karthik Sha in Civil Application No(S). 4894/2022 decided on 18.7.2022 wherein the

Honourable Apex observed that 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. When two or more proceedings are pending in different Courts between the same parties which raise common question of fact and law, and when the decisions in the cases are interdependent, it is desirable that they should be tried together by the same Judge so as to avoid multiplicity in trial of the same issues and conflict of decisions.

7. In this view of the matter and in view of the fact that learned Judge of the Family Court at Amravati has fixed the

matter for evidence and there would not be conflicting decision if proceeding filed by the non-applicant/husband is transferred from Nagpur to Amravati, the application deserves to be allowed. Hence, I pass following order:

ORDER

(1) The Misc. Civil Application is **allowed**.

(2) Hindu Marriage Petition No.A-211/2021, filed by the non-applicant/husband, pending before learned Principal Judge, Family Court at Nagpur be transferred to learned Judge of the Family Court at Amravati.

(3) The parties shall appear before learned Judge of the Family Court at Amravati on 10.3.2023.

With this, the Misc. Civil Application stands **disposed** of.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!

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