

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

MISC. CIVIL APPLICATION (TR) NO.71/2023

Smt. Pratibha w/o Harishyam Prajapati

Vs.

Shri Harishyam s/o Ramswaroop Prajapati

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

Court's or Judge's orders

Mr. Aditya Deshpande, Advocate for the applicant (Appointed).

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 02/03/2023

1. By this application, applicant – wife is seeking transfer of matrimonial proceedings i.e. Hindu Marriage Petition bearing No.112/2022 pending before the District Judge -6 and Additional Sessions Judge, Kalyan to the Family Court, Nagpur.

2. As per the contention of the applicant, she is the legally wedded wife of the non-applicant. Their marriage performed on 24.01.2019. After marriage, the applicant was residing along with the non-applicant, however she was not treated well and therefore she constrained to leave matrimonial house. Thereafter, she filed the proceeding under the domestic violence Act which is pending before the Judicial Magistrate First Class, Nagpur. She had also filed First Information Report against the non-applicant under Section 498-A of the Indian Penal Code which is also pending in the Court

of Judicial Magistrate First Class, Nagpur. Subsequently the non-applicant had filed matrimonial proceeding bearing No.112/2022 for divorce under the provisions of Special Marriage Act. As per the contention of the applicant the distance between Nagpur and Kalyan is more than 600 Kms. The applicant is staying at the mercy of her brother. There is nobody to look after her and to escort her to attend the proceeding at Kalyan. It is further her contention that after desertion non-applicant has not made any provisions for her maintenance. Therefore, she is unable to bear the cost of litigation and hence matrimonial proceeding be transferred from Kalyan to Nagpur. It is submitted by the applicant that though she had filed an application for monetary reliefs before the Judicial Magistrate First Class, however non-applicant is not attending the proceeding. It is the contention of the applicant that as she has no source of income, she is unable to bear the cost of the litigation as well as the proceeding which is filed at Kalyan Court is inconvenient for her, and therefore the matrimonial proceeding be transferred to Family Court, Nagpur.

3. Notice of the said application though served on the non-applicant but he has chosen not to appear and not to contest the application.

4. Heard learned Advocate for the applicant

Mr. Deshpande, he reiterated the contentions and additionally submitted that considering the matrimonial proceeding is pending and it is well settled that convenience of the wife is to be taken into consideration. He also placed reliance on the decision of the Hon'ble Apex Court in **N.C.V Aishwarya Vs. A. S. Sarvana Karthik Sha in Civil Appeal No.4894/2022** and order of this Court passed in **Misc. Civil Application No.194/2022 (Sau. Vaishali w/o Rahul Titare Vs. Rahul s/o Babarao Titare)** decided on 17.01.2023.

5. Perused the application.

6. Heard the submissions of the learned Advocate. There is no dispute that the distance between Kalyan to Nagpur is more than 600 Kms. Already two proceedings are filed by the applicant in the Court at Nagpur. The aspect of convenience is dealt by the Hon'ble Apex Court in the case of **N.C.V. Aishwarya Vs. A. S. Sarvana Karthik Sha** (supra) and it is held in para No.9:

“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."

7. As noticed above, the applicant who is lady of 54 years has to travel all alone 600 Kms is inconvenient for her. Moreover, two proceedings are already pending in the Court of Judicial Magistrate First Class, Nagpur. It will be just and proper if the 3rd proceeding is also transferred to the Family Court, Nagpur and no prejudice will be caused to the non-applicant, if the said proceeding is transferred to Family Court Nagpur. Considering the convenience of the wife, it will be just and appropriate to transfer the proceeding in the Family Court, Nagpur.

8. In view of that application deserves to be allowed. Hence, I proceed to pass following order:

- (i) The Misc. Civil Application (Tr.) No.71/2023 is allowed.
- (ii) The Hindu Marriage Petition bearing No.112/2022 pending in the Court of District Judge - 6 and Additional Sessions Judge, Kalyan be transferred to the Family

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Court Nagpur.

- (iii) The District Judge - 6 and Additional Sessions Judge, Kalyan shall send the record and proceeding to the Family Court, Nagpur.
- (iv) Parties to remain present before the Family Court, Nagpur on 18.03.2023.
- (v) Fees of appointed Advocate for the applicant be paid as per rules.
- (vi) Misc. Civil Application is disposed of.

(URMILA JOSHI-PHALKE, J.)

Sarkate