

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

MISC. CIVIL APPLICATION (TR.) NO. 194 OF 2022

Sau. Vaishali W/o Rahul Titare

..VS..

Rahul S/o Babarao Titare

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

Court's or Judge's orders

Mr. Ram Karode, Advocate for the applicant.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : JANUARY 17, 2023

By this Application, applicant wife is seeking transfer of matrimonial proceedings i.e. Hindu Marriage Petition bearing No. A-552 of 2021 which is pending in the Court of Family Court, Thane to the Family Court, Akola.

2. As per the contention of the applicant that marriage of the applicant with the non-applicant was performed on 15.07.2018. After marriage, she resumed cohabitation in the house of non-applicant. However, she was not treated well and therefore, she constrained to leave matrimonial house. After she left the matrimonial house, non-applicant has not taken any attempt to fetch her back to the matrimonial house and not made any provision for her maintenance. On the contrary, non-applicant preferred the Hindu Marriage Petition

No.A-552 of 2021. This petition is filed for divorce in the Family Court, Thane. She further contended that the distance between Akola to Thane is near about 500 kms. As non-applicant has not made any provision for her maintenance, she has no source of income, she is residing on the mercy of her poor mother. Nobody in the house to escort her to attend the proceedings at Thane. In such circumstances, she is unable to bear the costs of the litigation as well as attend the dates in the Family Court, Thane.

3. Notice of the said Application though served on the non-applicant, but he chose not to appear and contest the Application.

4. Heard learned Advocate Mr. Ram Karode for the applicant. He endorsed the same contention and submitted that as applicant has no source of income, no provision is made by the non-applicant for her maintenance, she is residing along with her mother and nobody is in the house to escort her to attend the dates in the Family Court, Thane. He further places reliance on the case of *N.C.V Aishwarya Vs. A.S. Saravana Karthik Sha, Civil Application No. 4894 of 2022* reported in *AIR 2022 SC 4318*, wherein the Hon'ble Apex Court held 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. Same judgment is further referred in the order passed by the Hon'ble Apex Court in the case of *Ruchi Rawat Vs. Principal Judge, Family Court*, in *Civil Appeal No(s). 5218 of 2022*, dated *05th August, 2022* and held that the convenience of the wife is to be considered while deciding the transfer application.

5. In view of the reasons mentioned in the Application and also in view of the observations of the Hon'ble Apex Court in the case of *N.C.V. Aishwarya* (supra), the Application of the applicant deserves to be allowed. Hence, I proceed to pass the following order :

- (i) The Misc. Civil Application (Tr.) No. 194 of 2022 is allowed.
- (ii) The Hindu Marriage Petition bearing No. A-552 of 2021 which is pending in the

Court of Family Court, Thane is transferred to the Family Court, Akola.

- (iii) The Misc. Civil Application (Tr.) No. 194 of 2022 is disposed of.

(URMILA JOSHI-PHALKE, J.)

Kirtak