

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

MISC. CIVIL APPLICATION NO.135 OF 2022

(Mrs. Geeta @ Harsha w/o Subhash Wakde Vs. Subhash s/o Pandhari Wakde)

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

Court's or Judge's Order

Mrs P.D. Rane, Advocate (appointed) for the applicant.

CORAM:- URMILA JOSHI-PHALKE, J.

DATED :- JANUARY 31, 2023.

Heard.

2. By preferring this application, the applicant-wife is seeking transfer of matrimonial proceeding bearing H.M.P No.166/2020 filed by the non-applicant – husband for divorce in the court of Civil Judge, Senior Division, Gondia.

3. As per the contention of the applicant, her marriage with the non-applicant was solemnized on 28/02/2013. After marriage she resumed cohabitation at the house of the non-applicant however, she was not treated well. Since last three years she constrained to live at her parents house. The non-applicant has not made any provision for her maintenance as well as he is not taking care of small children also. The applicant has to incur the expenses for the maintenance of the small children. The applicant is residing at Nagpur at the mercy of her parents. Her parents are old aged. There is nobody to escort her to attend the proceedings. Initially, the applicant was doing temporary job in Sakshi Collection, Nagpur and was earning salary of Rs.5000/-. Now she is

not doing any job and there is no source of income. For her livelihood non-applicant has not made any provision either for her maintenance or for the expenses of the children. Even he is not visiting the children.

4. In the above circumstances she is unable to attend the proceedings by incurring the expenses of the litigation, and therefore, she prayed for transfer of the matrimonial proceeding.

5. Notice of the said application is served on the non-applicant. He engaged the Counsel however, none is present today.

6. By order dated 16/01/2023, last opportunity was granted to the non-applicant to contest the claim however, today also none represented the non-applicant.

7. Heard Mrs. Rane, learned Counsel for the applicant and perused the application. She reiterated the contentions and submitted that the applicant has no source of income and she has to maintain her two children. The applicant has not provided any maintenance and from last three years she is residing at the mercy of her parents. In the above circumstances, it is difficult for the applicant to attend the proceedings and incur the cost of litigation.

8. The non-applicant has chosen not to contest the claim. He has filed the matrimonial proceeding in the Court of Civil Judge, Senior Division, Gondia which is 165 kilometers from the Nagpur. The applicant is having two small children aged about 9 years and 5 years.

9. Considering the grounds mentioned in the application and the non-applicant has not made any provision for her maintenance, the applicant has to incur the expenses not only towards the expenses of the children but also towards their education as well as she has to incur the expenses towards the proceedings at Gondia. It is further apparent that she has no source of income.

10. Recently, the Hon'ble Apex Court in the case of *N.C.V. Aishwarya Vs. A.S. Saravana Karthik Sha* (Civil Appeal No.4894/2022) by order dated 18/07/2022 dealt with this issue and held in paragraph No.9 as follows:

“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.”

11. As noticed above and in the above circumstances, it will be just and proper to transfer the H.M.P. No.166/2020 in the Family Court, Nagpur considering the convenience of the applicant-wife. Hence, application deserves to be allowed.

12. In the result of the above, I proceed to pass the following order :

(i) The application is allowed.

(ii) The matrimonial proceeding bearing HMP No.166/2022 pending before the Civil Judge, Senior Division, Gondia is transferred to the Family Court, Nagpur.

(URMILA JOSHI-PHALKE, J.)

**Divya*