

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

MISC. CIVIL APPLICATION (TR.) NO.229 OF 2022

Fatima Mohammed Raees Khan

Vs.

Mohammed Raees Ramzan Khan @ Mohammed Rahish Ramzan Khan

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

Court's or Judge's orders

Mr. Syed Shahid, Advocate for the applicant.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 10/01/2023

1. Heard.
2. By preferring this application, applicant is seeking transfer of R.C.S. Petition No.58 of 2022 pending in the Court of Civil Judge Junior Division, Belapur CBD, Vashi to the Family Court, Nagpur.
3. As per the contention of the applicant, she is legally wedded wife of non-applicant and their marriage was performed as per Muslim rites and customs. After marriage, she was not treated well by the non-applicant and she was constrained to leave matrimonial house. Applicant has filed petition under Section 12 of the Protection of Women From Domestic Violence Act, 2005 which is pending before the Civil Judge Senior Division, Nagpur bearing Misc. Criminal Application No.3351 of 2021. The non-applicant has filed petition for restitution of conjugal rights under the provisions of Mohammedan Law bearing No. R.C.S. Petition No.58 of 2022 and the

same is pending before the Civil Judge Junior Division, Belapur CBD, Vashi. She has also filed petition for grant of maintenance bearing Petition No.423 of 2021 which is pending before the Family Court, Nagpur.

4. It is further contention of the applicant that she is unable to maintain herself after she was constrained to leave matrimonial house. Non-applicant has not made any provisions for her maintenance and now he had filed petition seeking restitution of conjugal rights. The distance between Belapur Vashi and Nagpur is more than 700 Kms. The applicant is having small child. There is nobody to escort her at Mumbai. She is not having any relatives at Mumbai and on these grounds, it is difficult for her to attend the proceedings at Mumbai, and therefore she prayed for transfer of the R.C.S. Petition No.58 of 2022 in the Family Court, Nagpur.

5. Notice of the said application is served on the non-applicant. After service of notice and after giving proper opportunity to remain present and contest the application, non-applicant had chosen not to appear and contest the application.

6. Perused the application along with the documents filed on record. The transfer is sought only on the ground that due to the financial crises and there is nobody to escort the applicant to attend the proceedings in the Court of Judicial Magistrate First Class, Belapur. CBD, Vashi. She is unable to attend and find it difficult

to contest the petition filed by the non-applicant.

7. In support of the contention learned Advocate for the applicant placed reliance on ***N.C.V Aishwarya Vs. A. S. Saravana Karthik Sha reported in 2022 LiveLaw (SC) 627*** wherein it is held by the Hon'ble Apex Court 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 socioeconomic paradigm in the Indian society, generally, it is the wife's convenience which must be looked at while considering transfer.

8. In the light of the above observations of the Hon'ble Apex Court, in the present case nothing is on record to show that any maintenance provision is made by the non-applicant for the applicant. It is apparent that applicant is having small child and there is nobody to escort her to attend the proceedings at Belapur CBD, Vashi which is more than 700 Kms from Nagpur.

9. As noticed above and under the above circumstances, it is difficult for her to transfer all the way from Nagpur to Belapur CBD, Vashi to attend the Court proceedings of the case filed by the non-applicant seeking restitution of conjugal rights.

10. Resultantly, the application succeeds and is accordingly allowed. Hence, I proceed to pass the following order.

ORDER

- (i) The R.C.S. Petition No.58 of 2022 pending in the Court of Civil Judge Junior Division, Belapur CBD, Vashi is transferred to Family Court, Nagpur.
- (ii) Misc. Civil Application is disposed of.

(URMILA JOSHI-PHALKE, J.)

Sarkate