

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

MISC. CIVIL APPLICATION NO. 234/2022

Sau. Akansha Alias Himani Sumit Karemore Vs Sumit Prabhakar Karemore

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

Court's or Judge's Order

Mr Kartik Rao, Advocate for the applicant.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 28/02/2023.

1. By preferring this application, the applicant/wife is seeking transfer of the matrimonial proceedings bearing No. A-7/2022 from Family Court, Bhandara to Family Court Amravati.

2. As per the contention of the applicant, the marriage with the non-applicant was solemnized on 16/02/2021. After the marriage, she resumed cohabitation. However, she was not treated well and therefore, she constrained to live matrimonial house. Thereafter, she filed the proceedings under the provisions of Domestic Violence Act, 2005 bearing registered No. P.W.D.V. 170/2021 pending before the Chief Judicial Magistrate, Amravati. The non-applicant has already appeared in the said proceedings. She had also filed the complaint vide Crime No. 0081/2022 under Section 498-A, 417, 506 and 34 of the Indian Penal Code. The crime is registered at Kotwali, Police Station Amravati. Subsequently to give counterblast to the said

proceedings, the non-applicant has preferred the proceeding under Section 9 of the Hindu Marriage Act for getting decree of restitution of conjugal rights.

3. It is contended by the applicant that distance between Amravati to Bhandara is more than 200 kms. Moreover, the non-applicant is already attending the proceedings at Amravati. The two proceedings are already pending at the Amravati, if this proceedings is also transferred to Amravati, it will be convenient for both the parties to attend the proceedings and no prejudice will cause to the non-applicant.

4. It is further contention of the applicant that considering the distance between two cities, it is inconvenient for applicant to attend the proceedings by travelling all alone for 200 kms. On the contrary, if the proceedings filed by the non-applicant is transferred then, it will be convenient for the non-applicant also. She further contended that after she was deserted to the non-applicant, non-applicant has not made any provision for her maintenance, she has no source of income and therefore, she is unable to bear the cost of litigation. Moreover, there is nobody to escort her to attend the proceedings. For all above these grounds, the matrimonial proceedings bearing No. A-7/2022 pending in the Family Court Bhandara be transferred to Family Court, Amravati.

5. Notice of the said application is duly served by the non-applicant. After giving sufficient opportunity, he remained absent and chosen not to contest the application.

6. Shri Kartik Rao, learned advocate h/f For Shri P.S. Patil for the applicant reiterate the said contention and submitted that considering the matrimonial proceedings is pending between the parties. Convenience of the wife is to be taken into consideration.

7. Heard learned advocate for the applicant. Perused the application.

8. As per the contention of the applicant, the distance between two cities is more than 200 km. She is a young lady of 26 years. It is also apparent that non-applicant has not made any provisions for her livelihood till she was deserted. She is residing at the mercy of her parents at Amravati. As no provision is made by the non-applicant for her maintenance. It is difficult for her to bear the cost of the litigation. Now it is well settled that, when transfer application regarding the matrimonial proceeding is to be considered, the convenience of the wife is to be looked into. Recently the Hon'ble Supreme Court of India has passed the rulings in the case of N.C.V. Aishwarya v. A.S. Sarvana Karthik Sha¹ dealt with the said issue and in para-9 observed as follows:-

“9. The cardinal principle for exercise of power under Section 24 of the Code of Civil Procedure

1 AIR 2022 SC 4318

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."

9. As noticed above, the applicant is the young lady of 26 years, staying at the mercy of her parents. The distance between 2 cities is more than 200 kms. The non-applicant has made any provisions for her maintenance and therefore, she is unable to bear the cost of litigation as well as the earlier proceedings filed by her is already pending at the Amravati and non-applicant is attending the said proceedings. So no prejudice would be caused to the non-applicant if the present petition No. 07/2022 is transferred to the Family Court Amravati. Hence, I proceed to pass the following order:

- a) The Misc. Civil Application (Tr) No. 234/2022 is allowed.
- b) The matrimonial proceedings bearing Petition No. A-7/2022 pending before the Family Court,

Bhandara be transferred to Family Court, Amravati for adjudication.

- c) The Family Court Bhandara shall send record and proceeding of the Petition No. A-7/2022 to Family Court Amravati.
- d) The parties shall appear before the District Court Amravati on 14/03/2023.

JUDGE