

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

MISC.CIVIL APPLICATION (TR) NO.377/2022

Nilima w/o Rakesh Kumbhare

..VS..

Shri Rakesh s/o Eshwardas Kumbhare

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

Court's or Judge's Order

.....
Shri N.R.Bhisikar, Counsel for the Applicant.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 16/02/2023

1. By this application, the applicant/wife seeks transfer of matrimonial proceedings bearing Petition No.A-1409/2021 pending before learned Judge of Family Court No.2 at Nagpur to learned Civil Judge Senior Division at Gadchiroli.

2. As per contentions of the applicant/wife, she is legally wedded wife of the non-applicant/husband. Her marriage with him was solemnized 17.6.2020. After marriage, she resumed cohabitation. However, she was not treated well and, therefore, she was constrained to leave her matrimonial house. She gave birth to a male child who is now ten months old. The said child is suffering from heart disease. As the non-applicant/husband has not made any monetary provision for her livelihood, she filed an application under Section 12 of the Protection of Women from Domestic Violence Act bearing Criminal Case No.48/2021 at Gadchiroli and the non-applicant/husband is attending the said proceedings at Gadchiroli. The non-applicant/husband now has preferred Petition No.A-1409/2021

which is pending before learned Judge of Family Court No.2 at Nagpur for restitution of conjugal rights. As her son is ten months old and suffering from heart ailment, she is unable to attend the said proceedings at Nagpur by travelling from Gadchiroli which at a distance of about 170 kilometers. She is residing at the mercy of her parents and there is nobody to escort her to attend proceedings at Nagpur. So also she is unable to bear expenses of litigation as the non-applicant/husband has not made any provision for her livelihood. She has also produced a medical certificate issued by Dr.Sarita Khobragade in support of the application.

3. Heard learned counsel Shri N.R.Bhisikar for the applicant. Notice of the application is served upon the non-applicant/husband, however he chose not to appear and contest the matter though he was given an opportunity.

4. Learned counsel Shri N.R.Bhisikar for the applicant/wife reiterates submissions as per contentions in the application. He submits that taking into consideration convenience of the applicant/wife, the application be allowed.

5. Perusal of the application shows that the applicant/wife is unable to attend proceedings at Nagpur along with her ten months minor child who is suffering from heart disease. She is unable to bear expenses of litigation as no provision has been made by the non-

applicant/husband for her livelihood. It is difficult and inconvenient for her to travel from Gadchiroli to Nagpur which is at a distance of 170 kilometers.

6. Recently, the issue of inconvenience has been dealt with by the Honourable Apex Court in the case of NCV Aishwarya vs. A.S.Saravana Karthik Sha in Civil Application No(S). 4894/2022 decided on 18.7.2022 wherein the Honourable Apex observed 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. When two or more proceedings are pending in different Courts between the same parties which raise common question of fact and law, and when the decisions in the cases are interdependent, it is desirable that they should be tried together by the same Judge so as to avoid multiplicity in trial of the same issues and conflict of

decisions.

7. In this view of the matter, convenience of the applicant/
wife is to be looked into. Hence, I pass following order:

ORDER

(1) The Misc. Civil Application is **allowed**.

(2) The matrimonial proceedings bearing Petition No.A-1409/2021
pending before learned Judge of Family Court No.2 at Nagpur be
transferred to learned Civil Judge Senior Division at Gadchiroli.

(3) The parties shall appear before learned Civil Judge Senior Division
at Gadchiroli on 13.3.2023.

With this, the Misc. Civil Application stands **disposed** of.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!

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