

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

MISC. CIVIL APPLICATION (TR.) NO.429 OF 2023

Zarin w/o Aslam Sheikh

Vs.

Aslam Najir Shaikh

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

Court's or Judge's orders

Mr. Jasprit Singh Chilotra, Advocate for applicant.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 03/05/2023

1. By this application, the applicant – wife is seeking transfer of Regular Civil Suit No.50/2022 pending in the Court of Civil Judge Junior Division, Malkapur for grant of declaration of divorce.

2. The application is filed on the ground that the marriage between the applicant and non-applicant was performed. After marriage, she resumed cohabitation. However, matrimonial dispute arose between them, therefore, she constrained to leave matrimonial house. She has filed an application under Section 125 of the Code of Criminal Procedure before the Family Court, Yavatmal numbered as E – Petition No. 32/2021 and same was decided on 20.08.2022. By the said order, the Family Court was pleased to grant maintenance to the applicant at the rate of Rs.6,000/- per month and litigation charges of Rs.3,000/- to the

applicant.

3. In the mean period the non-applicant had filed a declaration of divorce petition Regular Civil Suit No.50/2022 before the Civil Judge Junior Division, Malkapur and the same pending in that Court. The applicant had filed an application for recovery of maintenance before the Family Court, Yavatmal. She had also filed a proceeding under Section 12 of the Protection of Women from Domestic Violence Act, 2005 for monetary reliefs. The non-applicant had filed an appeal before the Principal District Judge, Yavatmal challenging the interim maintenance granting in the Domestic Violence proceedings. The said appeal was registered as a Criminal Appeal No.31/2022. As per contention of the applicant, as the non-applicant has not made any provisions for her livelihood and also not paid maintenance amount though order by the Family Court, Yavatmal. Therefore, the applicant is unable to incur the expenses of the proceeding. The distance between Malkapur to Yavatmal is around 240 Km. It is highly inconvenient for her to attend the proceedings as other proceedings are already pending in the Yavatmal District wherein the non-applicant has put his appearance and attending the proceedings. So, no prejudice will be caused to him if the present proceeding is also transferred from Malkapur to Yavatmal.

4. Notice of the said application though served on the non-applicant, none appeared and non-applicant has chosen not to contest the application.

5. Heard learned Advocate Mr. Jasprit Singh Chilotra for the applicant. He reiterated the contentions and invited the attention towards the various proceedings which are pending before the Family Court, Yavatmal as well as Judicial Magistrate First Class, Yavatmal. The record further shows that non-applicant has already put his appearance in the said proceedings and also preferred an appeal against the interim maintenance order passed in a Domestic Violence Proceedings. Thus, it is apparent that non-applicant is already attending the proceeding at Yavatmal and no prejudice will be caused to him if the proceeding filed by him is transferred from Malkapur to Yavatmal. It is well settled now that while considering the transfer application in a matrimonial dispute the convenience of the applicant – wife is to be taken into consideration. Moreover, if all the proceedings are decided by the Family Court or at Yavatmal no conflicting decisions would be there and no prejudice will be caused either to the applicant or the non-applicant. In view of that, application deserves to be allowed. Hence, I proceed to pass following order.

(i) The Misc. Civil Application is allowed.

(4)

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(ii) The Regular Civil Suit No.50/2022 pending in the Court of Civil Judge Junior Division, Malkapur be transferred to the Family Court, Yavatmal for adjudication.

(iii) The Civil Judge Junior Division, Malkapur shall send record and proceeding of Regular Civil Suit No.50/2022 to the Family Court, Yavatmal.

(iv) The parties to appear before the Family Court, Yavatmal on 06.06.2023.

(v) Misc. Civil Application is disposed of.

(URMILA JOSHI-PHALKE, J.)

Sarkate