

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

MISC. CIVIL APPLICATION NO.280/2022

Ruchira w/o Praveen Vathare, d/o Late Mr.Narayan Bapurao Ghormare

..VS..

Praveen s/o Pandurang Vathare

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

Court's or Judge's Order

.....
Mrs.Shiba Thakur, Counsel for the Applicant/Wife.
Shri Yash Bangale, Counsel for the Non-applicant/Husband.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 16/02/2023

1. By this application, the applicant/wife seeks transfer of Marriage Petition No.77/2022 pending before learned Civil Judge Senior Division at Jaysingpur, district Kolhapur to learned Principal Judge of the Family Court at Nagpur.

2. As per contention of the applicant/wife, she is legally wedded wife of the non-applicant/husband. Their marriage was solemnized on 21.12.2012 at Nagpur. After the marriage, she resumed cohabitation at the house of the non-applicant/husband. However, she was not treated well and, therefore, she was constrained to leave her matrimonial house. After she was deserted, she took shelter at her parental house at Nagpur. As the non-applicant/husband has not made her available any monetary provision for her livelihood, she filed proceeding under Section 125 of the Code of Criminal Procedure for grant of maintenance. She also lodged First Information Report for offences punishable under Section 498A, 405,

and 406 read with Section 34 of the Indian Penal Code and read with Sections 3 and 4 of the Dowry Act. Both proceedings are pending before learned Judicial Magistrate First at Nagpur. Now, the non-applicant/husband filed proceeding under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights. The distance between Nagpur to Jaysingpur, district Kolhapur is approximately 900 kilometers and it takes 24 hours for travelling to reach at Jaysingpur, district Kolhapur. Jaysingpur, district Kolhapur is not at all convenient place. The non-applicant/husband is already attending proceedings filed by the applicant/wife at Nagpur. As the non-applicant/husband has not made available any monetary provision, she is unable to bear expenses of litigation. There is nobody to escort her to Jaysingpur, district Kolhapur to attend proceeding. Hence, she prays that Marriage Petition No.77/2022 pending before learned Civil Judge Senior Division at Jaysingpur, district Kolhapur be transferred to learned Principal Judge of the Family Court at Nagpur.

3. Heard learned counsel Mrs.Shiba Thakur for the applicant/wife and learned counsel Shri Yash Bangale for the non-applicant/husband.

4. Learned counsel Mrs.Shiba Thakur for the applicant/wife reiterates contentions as pleaded in the application and prays that Marriage Petition No.77/2022 pending before learned Civil Judge Senior Division at Jaysingpur, district Kolhapur be transferred to

learned Principal Judge of the Family Court at Nagpur.

5. Learned counsel Shri Yash Bangale for the non-applicant/ husband strongly opposes the application for grant of transfer and submits that grounds mentioned in the application are false and baseless. He submits that as no reasonable and justifiable grounds are made out by the applicant/wife, the application be rejected.

6. I have heard learned counsel for the applicant/wife and learned counsel for the non-applicant/husband. Also, perused the application. It is not in dispute that the distance between Nagpur to Jaysingpur, district Kolhapur is approximately 900 kilometers and it takes 24 hours for travelling to reach at Jaysingpur, district Kolhapur. Jaysingpur, district Kolhapur is not at all convenient place. It is also not in dispute that in two proceedings by the applicant/wife at Nagpur, the non-applicant/husband is already attending. The non-applicant/husband has preferred proceeding at Jaysingpur, district Kolhapur for restitution of conjugal rights. It is also not in dispute that no orders regarding maintenance has yet been passed in proceeding filed by the applicant/wife under Section 125 of the Code of Criminal Procedure and, therefore, the contention of the applicant/ wife that she is unable to bear expenses of litigation is acceptable considering long distance of 900 kilometers. Since the non-applicant/ husband is already attending two proceedings by the applicant/wife at Nagpur, it would not be inconvenient for the non-applicant/husband to

attend proceeding at Nagpur if proceeding filed by him at Jaysingpur, district Kolhapur is transferred to Nagpur.

7. It is a well settled position of law that while considering applications for transfer, convenience of wife is to be looked into. 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.

8. In view of the decision of the Honourable Apex Court in the case cited *supra* and considering convenience of wife, the application deserves to be allowed. Hence, I pass following order:

ORDER

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

(2) Marriage Petition No.77/2022 pending before learned Civil Judge Senior Division at Jaysingpur, district Kolhapur be transferred to learned Principal Judge of the Family Court at Nagpur.

(3) The parties shall appear before learned Judge of the Family Court at Nagpur on 15.3.2023.

With this, the Misc.Civil Application is **DISPOSED OF**.

(URMILA JOSHI-PHALKE, J.)

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