

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

MISC. CIVIL APPLICATION (TRANSFER) NO.267/2022

Sou. Kalpana @ Ujwala w/o Suresh Jadhav

..VS..

Shri Suresh s/o Mohan Jadhav

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

Court's or Judge's Order

.....
Shri H.Dhumale, Counsel for the Applicant/Wife.
Shri A.K.Neware, Counsel for the Non-applicant/Husband.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 13/02/2023

1. By this application, the applicant/wife seeks transfer of Hindu Marriage Petition No.221/2019, filed by the non-applicant /husband for grant of divorce, pending before learned 4th Joint Civil Judge Senior Division and ACJM, Nagpur (Urban), Nagpur to any other competent Court at Pusad, district Yavatmal.

2. The marriage between the applicant/wife and the non-applicant/husband was solemnized on 20.6.2010 at Khedi (Wattur), Umarkhed, district Yavatmal as per hindu rites and customs. After the marriage, the applicant/wife was treated well for 15-20 days only and, thereafter, she was subjected to physical and mental cruelty and, therefore, she was constrained to leave her matrimonial house. She took shelter to her father's house and is residing at the mercy of her parents. She had regarding the ill-treatment given to her, lodged a report with Aroli Police Station for offences punishable under Sections 498A and 506 read with Section 34 of the Indian Penal Code.

As she has no source of income and the non-applicant has not made any monetary provision for her livelihood, she filed maintenance before learned Judicial Magistrate First Class at Pusad, district Yavatmal and learned Judge below granted maintenance Rs.3000/- per month. She filed recovery proceedings bearing Criminal Case No.116/2013 for recovery of maintenance granted to her inasmuch as the non-applicant/husband failed to pay her the said maintenance amount. The said recovery proceedings are still pending before learned Judicial Magistrate First Class at Pusad, district Yavatmal. On 30.5.2011, the non-applicant/husband filed petition bearing No.A-427/2011 before the Family Court at Nagpur for annulment of the marriage. Subsequently, said proceedings are transferred to learned Civil Judge Senior Division at Pusad, district Yavatmal and said proceedings came to be dismissed on 14.10.2014. On 3.10.2015, the non-applicant/husband preferred a petition under Section 9 of the Hindu Marriage Act for restitution of conjugal rights before learned Civil Judge Senior Division at Pusad, district Yavatmal which was withdrawn by him and now after nine years he preferred the petition for divorce at the Family Court at Nagpur which is sought to be transferred by this application. The applicant/wife contends that distance between the Pusad and Nagpur is more than 250 kilometers and as she is an illiterate lady, it is very difficult for her to travel all alone from Pusad to Nagpur. There is nobody to escort her to attend proceedings as well as she is unable to bear expenses of litigation as maintenance amount is not paid to her by the non-applicant/husband.

Hence, the applicant/wife seeks transfer of the Hindu Marriage Petition filed by the non-applicant /husband for grant of divorce pending before learned 4th Joint Civil Judge Senior Division and ACJM, Nagpur (Urban), Nagpur to any other competent Court at Pusad, district Yavatmal.

3. In response to the notice, the non-applicant/husband filed reply and denied contentions of the applicant/wife. As per his contentions, when the applicant/wife can attend proceedings at taluka Mouda, district Nagpur, she can attend proceedings at Nagpur. He is ready to bear conveyance expenses for the applicant/wife if she travels by A.C.Bus upto Rs.800/- per day. The applicant/wife is suffering from mental disorder and on that ground he filed proceedings for divorce. All witnesses are resident of village Mouda, district Nagpur and, therefore, it will not be convenient for witnesses to attend proceedings at Yavatmal. Hence, he prays that the application be rejected.

4. Heard learned counsel Shri H.Dhumale for the applicant/wife and learned counsel Shri A.K.Neware for the non-applicant/husband.

5. Learned counsel Shri H.Dhumale for the applicant/wife reiterates contentions as are raised in the application. He invites my attention to earlier order passed in Misc.Civil Application No.254/2012

by this Court whereby earlier proceedings bearing Petition No.A-427/2011 were transferred to learned Civil Judge Senior Division at Pusad, district Yavatmal. He submitted that considering convenience of the applicant/wife, application was allowed and the same rule is applicable to the present case. There is no reason to deviate from the well settled position of law of this Court as well as of the Honourable Apex Court and prayed that the application be allowed.

6. Learned counsel Shri A.K.Neware for the non-applicant/husband submits that the non-applicant/husband is ready to bear conveyance expenses for the applicant/wife if she travels by A.C.Bus upto Rs.800/- per day and, therefore, it will not be difficult for her if she attends proceedings at Nagpur. The non-applicant/husband filed proceedings for divorce on the ground that the applicant/wife is suffering from mental disorder as well as he is acquitted of offence punishable under Section 498A of the Indian Penal Code. He submitted that all relevant witnesses are resident of village Mouda, district Nagpur and, therefore, it will not be convenient for witnesses to attend proceedings at Yavatmal. Learned counsel prays that the application be rejected.

7. I have heard learned counsel for the applicant/wife; learned counsel for the non-applicant/husband, and perused the application. Also, perused the earlier order passed in Misc.Civil Application No.254/2012 wherein this Court has also considered that

convenience of the wife is required to be looked into.

8. The main grounds raised by learned counsel Shri H.Dhumale for the the applicant/wife are that the distance between Pusad and Nagpur is more than 250 kilometers and as she is an illiterate lady, it is very difficult for her to travell all alone from Pusad to Nagpur. There is nobody to escort her to attend proceedings as well as she is unable to bear expenses of litigation as maintenance amount is not paid to her by the non-applicant/husband. Learned counsel Shri A.K.Neware for the non-applicant/husband vehemently submitted that the non-applicant/husband is paying amount Rs.5000/- per month regularly and no arrears are pending against him.

9. Considering rival submissions of parties and the earlier order passed by this Court, grounds raised in the application are to be considered. The convenience of wife is to be looked into while considering applications for transfer and it is the well settled position of law by this Court as well as by the Honourable Apex Court.

10. In this view of the matter, grounds raised in the application for transfer are to be considered. It is not in dispute that applicant is residing at Pimpalgaon, post Kasola, tahsil Mahgaon, district Yavatmal. The distance between her village and Nagpur is more than 250 kilometers. It is pertinent to note that the non-

applicant/husband filed proceedings for divorce on the ground that the applicant/wife is suffering from mental disorder and on the ground of cruelty and when the non-applicant/husband has raised the ground that the applicant/wife is suffering from mental disorder, it will not be appropriate to insist her to attend proceedings by asking her to travel all alone from Pusad to Nagpur. Whether the applicant/wife is suffering from mental disorder or not is a matter of evidence. However, considering allegations made by the non-applicant/husband, it will be appropriate to transfer proceedings from Nagpur to Pusad, considering convenience of the wife.

11. 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.

12. In this view of the matter and in view of the distance between Pusad and Nagpur is more than 250 kilometers and the aspect as considered in the order passed by this Court earlier and so also the non-applicant/husband was attending proceedings at Pusad, there is no reason for me to deviate from observations in the case cited *supra* and in the order passed by this Court. Hence, I pass following order:

ORDER

(1) The civil application is **allowed**.

(2) The Hindu Marriage Petition No.221/2019, filed by the non-applicant /husband for grant of divorce, pending before learned 4th Joint Civil Judge Senior Division and ACJM, Nagpur (Urban), Nagpur, is transferred to learned Civil Judge Senior Division at Pusad, district Yavatmal.

(3) The parties are directed to appear before learned Civil Judge Senior Division at Pusad, district Yavatmal on 3.3.2023.

With this, the application is **allowed** and **disposed** of.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!

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2023.02.14
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