

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

MISC. CIVIL APPLICATION NO.353 OF 2022

(Smt. Siddhi Tushar Bhandarkar Vs. Tushar Madanrao Bhandarkar)

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

Court's or Judge's Order

Shri D.M. Ailani, Advocate for the applicant.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- MARCH 21, 2023.

Heard.

2. Leave is granted to the applicant to amend the prayer clause (a).
3. This application is filed under Section 24 of the Code of Civil Procedure for seeking transfer of the matrimonial proceeding.
4. As per the contention of the applicant, her marriage with the non-applicant was performed on 10/03/2021. After marriage she resumed cohabitation however she was not treated well, therefore, she was constrained to leave matrimonial house.
5. After she was deserted, non-applicant has not made any provision either for her maintenance or for her livelihood, therefore, she had filed an application under Section 12 of the Domestic Violence Act for monetary relief. She had also filed an application under Section 125 of the Cr.PC. for grant of maintenance which are pending before the Judicial Magistrate First Class, Chandrapur. She had also filed an application under Section 9 of the

Hindu Marriage Act for restitution of conjugal rights before the Civil Judge, Senior Division, Chandrapur.

6. To give counter blast to the petitions filed by her, the non-applicant had filed divorce petition at Family Court, Bhandara. The distance between Chandrapur and Bhandara is more than 200 kilometers.

7. As the non-applicant has not made any provision for her maintenance, she is unable to bear the cost of litigation. Moreover, there is nobody to escort her to attend the proceeding.

8. Heard Shri D. Ailani, learned Counsel for the applicant. He reiterated the same contentions and submitted that taking into consideration the convenience of the applicant the petition bearing No.A-45/2022 filed by the non-applicant be transferred to the Civil Judge, Senior Division, Chandrapur.

9. In support of the contention Shri Futane, learned Counsel placed reliance on ***N.C.V Aishwarya Vs. A.S. Saravana Karthik Sha*** (Civil Appeal No.4894/2022) by order dated 18/07/2022 wherein the Hon'ble Apex Court dealt with this issue and held in paragraph No.9 as follows:

“9. 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.”

10. As noticed above, it is inconvenient for her to attend the proceeding at Amravati as she is unable to bear the cost of litigation and the applicant is a young lady who has to travel 200 kilometers to attend the proceeding and there is nobody to escort her to attend the proceeding. Moreover, her petition is already pending before the Civil Judge, Senior Division, Chandrapur for restitution of conjugal rights. If present proceeding is also transferred to the Civil Judge, Senior Division, Chandrapur there would not be conflicting decision and multiplicity of the proceedings would be avoided.

11. Hence, I pass the following order :

- (i) The application is allowed.
- (ii) The matrimonial proceeding bearing No.A-45/2022 pending before the Family Court, Bhandara be transferred to the Civil Judge, Senior Division, Chandrapur for adjudication.

(iii) Family Court Bhandara shall send the record and proceedings of Petition No.A-45/2022 to the Civil Judge, Senior Division, Chandrapur.

(iv) The parties to remain present before the Civil Judge, Senior Division, Chandrapur on 13/04/2023.

(URMILA JOSHI-PHALKE, J.)

**Divya*