

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

MISC. CIVIL APPLICATION (Tr) NO.359 OF 2022

[Rupali W/o Abhijeet Kamble ..V/s.. Abhijeet S/o Haribhai Kamble]

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

Court's or Judge's order

Mr T. S. Deshpande, Advocate for Applicant.
Mr P. K. Raulkar, Advocate for Non-Applicant.

CORAM : URMILA JOSHI-PHALKE, J.

DATE : 9th MARCH, 2023.

. Present application is filed by the applicant (wife) for seeking transfer of the matrimonial proceeding bearing No.A-65 of 2022, pending before the Family Court, Yavatmal to the Family Court at Nagpur.

2. It is contended by the applicant (wife) that her marriage was solemnized with the non-applicant on 05.06.2017. After marriage, she resumed cohabitation, however, she could not continue cohabitation as she was ill treated at hands of the non-applicant and his family members. The non-applicant has filed divorce petition bearing No.A-65 of 2022 before the Family Court at Yavatmal. The distance between the Yavatmal and Nagpur is more than 142 Kms. The applicant is serving at Nagpur. It is difficult for her to travel Nagpur by obtaining leave from her office. It is further submitted that now non-applicant is also serving at Nagpur, and therefore, no prejudice will be caused to the non-applicant, if marriage petition is transferred from Family Court, Yavatmal to Family Court at Nagpur.

3. Said application is strongly opposed by the non-applicant on the ground that initially, petition bearing No.203 of 2018 under Section 13(b) of the Hindu Marriage Act, 1955 was filed by both the applicant and non-applicant, which was withdrawn as the both were ready to reside together. Subsequently, another petition bearing No.31

of 2020 was filed for divorce by mutual consent, but present applicant has not turned out. Therefore, present non-applicant constrained to file this application. No ground is made out for transfer, and hence, the application deserves to be rejected.

4. Heard learned Advocate appearing for the parties. Perused the application as well as affidavit-in-reply.

5. Admittedly the applicant (wife) is serving at Nagpur. It is submitted by learned Advocate for non-applicant that non-applicant is a jobless and residing at Yavatmal. Therefore, it is difficult for him to attend the proceeding at Nagpur. It is further submitted by the learned Advocate that the applicant is the earning women as she is doing the Government job. So, there is no difficulty for her to travel as well as to incurred the expenses of the litigation. Hence application deserves to be rejected.

6. On the other hand, Mr Deshpande, learned Advocate for the applicant submitted that the applicant is doing Government job. The distance between Yavatmal to Nagpur is more than 142 Kms. She has to obtain the leave and attend the proceeding at Yavatmal. He submitted that it is not settled by the Hon'ble Apex Court that while considering the transfer application, the convenience of the applicant (wife) is to be taken into consideration. In view of that he prayed for the transfer of the Hindu Marriage Petition from Family Court, Yavatmal to Family Court at Nagpur.

7. I have perused the application. The only ground raised by the applicant is that she is residing at Nagpur and doing the Government job. Whereas, the non-applicant has raised ground that he is jobless and it is difficult for him to attend the proceeding and to bear the expenses of the said proceeding. Now and then, the convenience of the parties is a settled issue. Recently also the Hon'ble Apex Court has dealt with the said issue in *N.C.V. Aishwarya ..V/s.. A. S. Saravana*

Karthik Sha, in Civil Appeal No(s).4894 of 2022, wherein, the Hon'ble Apex Court has considered and observed that the cardinal principle for exercise of power under Section 24 of the Code of Civil Procedure is that 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 of the 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 the both the parties in eking out their livelihood and under whose protective umbrella they are seeking their sustenance to life. Given the prevailing socioeconomic paradigm in the Indian society, generally, it is the wife's convenience which must be looked at while considering transfer.

8. As noticed above, the applicant is the young lady of 37 years age staying alone. The distance between two cities is approximately 142 Kms. Moreover, she is also in Government job. In such circumstances, the convenience of the wife is to be looked into. In view of that application deserves to be allowed.

9. In this view of the matter, application is **allowed**.

10. Petition No.A-65 of 2022 pending before the Family Court, Yavatmal be transferred to the Family Court at Nagpur for adjudication. The Family Court, Yavatmal shall send the proceedings in Petition No.A-65 of 2022 to the Family Court at Nagpur.

11. Parties shall appear before the Family Court at Nagpur on 23.03.2023.

12. Misc. Civil Application No.359 of 2022 is disposed of.

JUDGE