

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

MISC. CIVIL APPLICATION (TR.) NO. 609 OF 2021

Mrs. Ruchi W/o. Vinay Jaiswal (D/o. Shri Prem Shankar Jaiswal)

...VERSUS...

Mr. Vinay Suresh Jaiswal and ors.

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

Court's or Judge's order

Shri A.C. Funde, Advocate h/f. Shri C.N.Funde, Advocate for applicant.

CORAM : URMILA JOSHI-PHALKE, J.

DATE : 24th JANUARY, 2023

By this application, the applicant-wife is seeking transfer of Civil M.A. No. 148/2020 pending in the Court of learned District Judge-3, Nagpur to learned Family Court at Pune.

2. As per the contention of the applicant that her marriage with respondent no. 1 was performed on 02/12/2015 at Nagpur. Due to matrimonial dispute, they are residing separately. The applicant is qualified Engineer and presently serving at Pune. From the wedlock, they have female child who is residing along with the applicant. Now, the respondents have filed an application bearing Civil M.A. No. 148/2020 in the Court of District Judge-3, Nagpur for custody of the child.

3. The transfer of aforesaid matter is sought on the ground that the distance between Pune and Nagpur is more than 700 k.m. Moreover, the applicant is having a small child of 5 to 6 years old. If she attends the proceedings at Nagpur, there is nobody to look after

her small child as well as she is serving at Pune and therefore, it is difficult for her to attend in the proceedings at Nagpur.

4. The notice of the said application is served upon the respondents. Though last opportunity was granted after service of the notice to the respondents to appear, they have chosen not to appear and not to contest the case. The application is supported by the varies proceedings filed before the Court of learned J.M.F.C. at Pune as well as the proceedings under the Guardians and Wards Act at Nagpur. The divorce petition is already disposed of. The service affidavit is also filed on record by the applicant to show that the respondents are duly served by all modes of service.

5. The transfer is sought only on the ground that the distance between the two cities is more than 700 km. as well as it is difficult for her to attend the proceedings at Nagpur leaving behind the child at Pune. The reasons mentioned in the application appears to be justified one. It is already well settled by the catena of the decisions that, in the matrimonial proceedings, the convenience of the wife is to be considered while considering the transfer of application. Recently in the case of **N.C.V. Aishwarya V/s. A.S. Saravana Karthik Sha [in Civil Appeal No(S). 4894 of 2022]**, the Hon'ble Apex Court has considered the issue and 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 the matrimonial matters, wherever the 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 behaviour 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". It is further held by the Hon'ble Apex Court that "it is the wife's convenience which must be looked at while considering transfer".

6. As noticed above, the applicant is a young lady serving at Pune having small child and the distance between the two places is more than 700 k.m. The prayer of the applicant is to be considered. In view of that, the application is allowed. The Civil M.A. No. 148/2020 pending in the Court of learned District Judge-3, Nagpur be transferred to the learned District Court at Pune.

7. Accordingly, the present application is disposed of.

(URMILA JOSHI-PHALKE, J.)

B.T.Khapekar