

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

MISC. CIVIL APPLICATION NO.397 OF 2022

(Smt. Preeti w/o Chandrashekhar Thakre Vs. Shri Chandrashekhar s/o Bhagwan Thakre)

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

Court's or Judge's Order

Shri N.R. Bhishikar, Advocate for the applicant.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- APRIL 11, 2023.

Heard.

2. By preferring this application, the applicant/wife is seeking transfer of marriage petition No.639/2022 pending before the 4th Joint Civil Judge, Senior Division, Pune to the Family Court No.3, Nagpur.

3. As per the contention of the applicant, she is legally wedded wife of the non-applicant and their marriage was solemnized on 20/06/2021. After marriage she resumed cohabitation however, she was not treated well, and therefore, she constrained to leave the matrimonial house. As the non-applicant has deserted her she is residing at the mercy of her brother at Nagpur.

4. The applicant has no source of income and she is completely dependent on the brother, therefore, she had instituted a proceeding against the non-applicant for seeking maintenance under Section 125 of the Code of Criminal Procedure. The said proceeding bearing Petition No.E-277/2022 is pending before the Family Court No.3, Nagpur for adjudication.

5. Now the non-applicant has filed the Marriage Petition bearing No.639/2022 for seeking decree of judicial separation which is pending in the Court of 4th Joint Civil Judge, Senior Division, Pune.

6. She further raised a ground that the distance between Nagpur to Pune is more than 800 kilometers. She has no source of income, therefore, she is unable to bear the cost of litigation. Moreover, she is only 29 years of age. There is nobody to escort her to attend the proceeding, and therefore, the marriage petition be transferred to the Family Court, Nagpur wherein one more proceeding is already pending for grant of maintenance. If both the proceedings are decided by the Family Court, Nagpur there would not be conflicting decisions.

7. The notice of the said application is served on the non-applicant. He appeared through his Counsel.

8. On 17/03/2023, the non-applicant as well as his Counsel both were absent, therefore, last opportunity was granted to the non-applicant to remain present and proceed with the application.

9. Today also neither the non-applicant nor his Counsel is present before the Court.

10. Shri Bhishikar, learned Counsel for the applicant is present. He reiterated the said contentions raised in the application. Additionally, he submitted that considering the convenience of the applicant/wife and one

proceeding is already pending in the Family Court No.3, Nagpur it will be convenient for both the parties to attend the proceeding in one Court.

11. Heard learned Counsel for the applicant. Perused the application.

12. The application is supported with the copy of the maintenance application.

13. The applicant has received the notice through Civil Judge, Senior Division, Pune to appear. There is no dispute that the distance between Pune to Nagpur is more than 800 kilometers. Nothing is on record to show that the non-applicant has made any provision for her maintenance or for her livelihood.

14. In view of that she has no source of income to bear the cost of litigation. As observed by the Hon'ble Apex Court in the case of ***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."

15. While considering the transfer application in matrimonial proceeding, the convenience of the applicant/wife is to be looked into. In view of that the application deserves to be allowed. Hence, I proceed to pass the following order :

- (i) The application is allowed.
- (ii) The matrimonial proceeding bearing Marriage Petition No.639/2022 pending before the 4th Joint Civil Judge, Senior Division, Pune be transferred to the Family Court No.3, Nagpur
- (iii) The 4th Joint Civil Judge, Senior Division, Pune shall send the record and proceedings to the Family Court No.3, Nagpur.
- (iv) The parties to appear before the Family Court No.3, Nagpur on 25/04/2023.

16. The application stands disposed of.

(URMILA JOSHI-PHALKE, J.)