

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

MISC. CIVIL APPLICATION (TR) NO. 433/2022

Priyanka Swapnil Dharme Vs Swapnil Suresh Dharme

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

Court's or Judge's Order

Shri S.B. Gandhe, Advocate for the applicant.

Shri P.M. Shukla, Advocate for the non-applicant.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 08/02/2023.

1. Heard.
2. The present application is filed by the applicant under Section 24 of the Code of Civil Procedure, 1908 for seeking transfer of matrimonial proceedings bearing Marriage Petition No. 99/2022, pending before the 4th Jt. Civil Judge, Senior Division and Additional Chief Judicial Magistrate, Nagpur to learned Civil Judge, Senior Division, Amravati.
3. As per the contention of the applicant, her marriage with the non-applicant was performed on 11/05/2014. After marriage, she resumed cohabitation at the house of the non-applicant. however, the non-applicant was addicted to bad vices and she was ill-treated by the non-applicant and his family members. She had also filed an application under the provisions of the Protection of Women from Domestic Violence Act, 2005, for monetary reliefs.

Thereafter, the non-applicant had filed an application under Section 9 of the Hindu Marriage Act for restitution of conjugal rights.

4. As per the contention of the applicant, she is residing at Morshi, which is 50 km away from the Amravati. After she was deserted by the non-applicant, no provision is made for her maintenance. She has to attend the proceedings from Morshi to Nagpur, which is approximately 200 Km and it is most inconvenience place for her. As, such she has no source of income and she is unable to bear the costs of the litigation.

5. Moreover, she is having two children and it is difficult for her to travel with the children as well as by keeping the children at Morshi, as there is nobody to look after them. On the above grounds, she claimed transfer of the Hindu Marriage Petition from Civil Judge, Senior Division, Nagpur to Civil Judge, Senior Division, Amravati.

6. In response to the notice of this application, the non-applicant appeared and filed his reply. Considering the fact that, matrimonial dispute arose between the parties, they are referred for the mediation, however, the pre-mediation dispute was not settled.

7. The non-applicant has no objection to transfer the petition at Amravati.

8. Heard both the sides.

9. Perused the application. The distance between the Nagpur to Morshi is approximately 200 Km. The applicant is also having two children. She has to look after them. Admittedly, she is residing at the mercy of her parents and no provision is made for her maintenance of the non-applicant. Therefore, it is difficult for her to bear the costs of litigation. The Hon'ble Apex Court has dealt with this issue and held that, while considering the transfer application in matrimonial matters, convenience of the wife needs to be looked into.

10. In the recent judgment of the Hon'ble Supreme Court of India in the matter of *N.C.V. Aishwarya vs A.S. Sarvana Karthik Sha*¹ has held thus:-

“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”

1 AIR 2022 SC 4318

11. As noticed above, the appellant who is having small children staying at the distance of 200 km and unable to bear the costs of litigation as well as she is unable to travel alone, I pass the following order:

- a] The Misc. Civil Application is allowed.
- b] The matrimonial proceedings no. 99/2022 pending in the Court of the Civil Judge, Senior Division, Nagpur is transfer to the Civil Judge, Senior Division at Amravati.
- c] The Civil Judge, Senior Division Nagpur shall transfer the entire record and proceedings to the Civil Judge, Senior Division, Amravati.
- d] The parties to appear before the Civil Judge, Senior Division, Amravati on 01/03/2023.

The Misc. Civil Application No. 433/2022 is **disposed of**.

JUDGE