

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

MISC. CIVIL APPLICATION NO. 488/2022

Sau. Chhabila w/o Sunil Dane V/s Shri Sunil S/o Prabhaudaval Dane

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

Court's or Judge's Order

Mr O.W. Gupta, counsel for the applicant.

Mr S.R. Chakravati, counsel for the non-applicant.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 10/03/2023.

1. The present application is filed by the applicant/wife under Section 24 of the Code of Civil Procedure, 1908 for seeking transfer of the proceedings bearing H.M.P.No. A/273/2022, pending before the Family Court no.2, Nagpur.

2. As per the contention of the applicant/wife, her marriage with the non-applicant took place on 24/05/2017. After marriage, she resumed cohabitation. However, she was not treated well by the non-applicant and his family members. Therefore, she constrained to leave the matrimonial house. Therefore, she is residing at the mercy of her parents. Now, the non-applicant has preferred the petition for divorce, which is pending in the Court of Family Court, Nagpur. The applicant is residing at Sakoli having four years child. The distance between Sakoli to Nagpur is 120 Km.. After desertion, the non-applicant has not any provision for

maintenance, though she has filed the application for monetary relief under Sections 18 to 23. Due to the paucity of funds, she is unable to bear the cost of the litigation also. There is nobody to escort her to attend the proceedings. For all above these grounds, she prayed for the transfer of the matrimonial proceedings from Family Court, Nagpur to the Civil Judge, Senior Division, Bhandara.

3. The said application is strongly opposed by the non-applicant on the ground that, the distance between Bhandara and Nagpur is only 50 Km., no grounds are made out by the applicant to transfer the proceedings. Therefore, the application is on baseless grounds and deserves to be rejected.

4. Heard learned counsel for the appellant Mr. O.W. Gupta for the applicant, he reiterated the same contention and additionally submitted that, considering the inconvenience caused to the applicant/wife, the application deserves to be allowed.

5. On the other hand, Mr. S.R. Chakrawarti, learned counsel for the non-applicant/husband submitted that absolutely there are no grounds to transfer the matrimonial proceedings. The distance is only 50 km. the applicant very well can attend the same.

6. Heard both the sides. Perused the application.

7. It is apparent that, the matrimonial relationship is admitted by both parties. The applicant is residing at the

mercy of her parents at Sakoli. As per the contention of the applicant, she is having small child of four years old who has to attend school. There is nobody to look after him in her absence. Moreover, the non-applicant has not made any provision for her livelihood after she was deserted. There is nobody in the family to escort her to attend the proceedings.

8. It is contended that, attending the proceedings at Nagpur is inconvenient for her. The application is supported by copies of the litigation filed by the applicant as well as by the non-applicant. The applicant has already filed the proceedings under the provisions of the Domestic Violence Act for monetary relief. Though, she has filed the application for monetary relief, yet she has not received any relief. In view of that, she is unable to bear the cost of the litigation. The inconvenience of the applicant/wife is also considered recently in the case of N.C.V. Aishwarya v. A.S. Sarvana Karthik Sha¹ 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

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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."

9. As noticed above, the applicant is a young lady of 27 years staying along with her small child, at the mercy of her parents. Considering that, she has not received any monetary relief, though she has filed an application. She is unable to bear the cost of the litigation. Moreover, nobody is there in the family to escort her to attend the proceedings. The non-applicant is also attending the proceedings at Sakoli, so no prejudice will be caused to him if the petition is transferred to the Court of the Civil Judge, Senior Division, Bhandara. Taking into consideration, the convenience of the applicant / wife, application deserves to be allowed. In view of that, I proceed to pass the following order:

- a) The Misc. Civil Application (Tr) No. 488/2022 is allowed.
- b) The matrimonial proceedings bearing HMP No A/273/2022 pending in the Court of Family Court, Nagpur be transferred to the Civil Judge, Senior Division, Bhandara for adjudication.
- c) The Family Court No.2 Nagpur shall sent the record and proceedings to the Civil Judge, Senior Division, Bhandara.

- d) The parties shall appear before the Civil Judge,
Senior Division, Bhandara on 21/03/2023.

Misc. Civil Application No. 488/2022 is disposed of.

JUDGE