

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

MISC. CIVIL APPLICATION NO. 625/2022

Sou. Neeta w/o Mahesh Sure V/s Mahesh Shankar Sure

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

Court's or Judge's Order

Mr K.Y. Mandpe, Advocate h/f Mr Y.B. Mandpe, Advocate for the
applicant.

Mr Aniket Rangari, Advocate h/f Mr R.A. Singh, Advocate for the
non-applicant.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 01/03/2023.

1. Present application is filed by the applicant/wife for transfer of matrimonial proceedings bearing No. HMP No. 177/2022, pending before the Court of Civil Judge, Senior Division, Chandrapur to the Principal Judge, Family Court, Nagpur.
2. As per the contention of the applicant her marriage with the non-applicant was solemnized on 17/04/2017. After marriage, she resumed cohabitation but she was not treated well and therefore, she constrained to leave the matrimonial house. She is having one son from the said wedlock.
3. As per the contention of the applicant, now the applicant has filed an application under Section 12 of the Domestic Violence Act, which is pending before the Special Judge, Domestic Violence Act and Judicial Magistrate First Class, Nagpur. The non-applicant, has filed a divorce petition bearing HMP No. 177/2022 under Section 9 of the Hindu

Marriage Act and the application for restoration of conjugal rights, which is pending before the Court of Civil Judge, Senior Division, Chandrapur.

4. As per the contention of the applicant, the distance between Chandrapur to Nagpur is more than 150 km. She is having small child, aged about 4 years, who is not attending school. If the applicant has to attend the proceeding at Chandrapur, then she has to travel along with the small child. Moreover, the non-applicant has not made any provision for her maintenance and therefore, she is unable to bear the cost of litigation.

5. It is further contention of the applicant that earlier already one proceeding is pending before the Special Judge, Judicial Magistrate First Class, Nagpur under the provisions of the Domestic Violence Act if another matrimonial proceeding is also transferred to Family Court, Nagpur, no prejudice will be caused to the non-applicant. She further submitted that, there is nobody in her family to escort her to attend the proceeding at a distance of 150 km as she is residing at the mercy of her parents.

6. The said application is strongly opposed by the non-applicant alternatively he also submitted that he has no serious objection even if the present petition is filed.

7. Heard both the sides. Perused the application.

8. As per the contention of the applicant that attending the proceeding at Chandrapur is inconvenient for her. She had

already filed a petition under the provision of the Domestic Violence Act, Act, wherein the non-applicant has already put his appearance. It is also apparent that he has not made any provision for her livelihood and therefore, she is unable to bear the cost of litigation. For above these grounds and taking into consideration, the convenience of the applicant, it will be just and proper to transfer the said proceedings from the Civil Judge, Senior Division, Chandrapur to Family Court, Nagpur. The issue of convenience is also dealt by the Hon'ble Apex Court 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 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.”

As noticed above, considering all one petition is pending before the JMFC Nagpur, no prejudice will be caused

1 AIR 2022 SC 4318

to the non-applicant, if the matter is transferred to the Family Court Nagpur. Whenever requires the Family Court, Nagpur shall consider the request of the non-applicant to appear the Video Conference. In view of that application deserves to be allowed. In view of that, I proceed to pass the following order.

- a) The Misc. Civil Application (Tr) No. 625/2022 is allowed.
- b) The matrimonial proceedings bearing HMP No 177/2022 pending in the Court No.2 of the Civil Judge, Senior Division Chandrapur to Principal Judge, Family Court, Nagpur for disposal.
- c) The Court No.2 of the Civil Judge, Senior Division, Chandrapur shall sent record and proceedings to the Family Court, Nagpur.
- d) Parties to appear before the Family Court, Nagpur on 17/03/2023.
- e) The Family Court, Nagpur shall consider the request of Non-applicant for his appearance through video conference, wherever such requests is made.

JUDGE