

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

MISC. CIVIL APPLICATION NO. 542 OF 2021

Deepali w/o Ameya Mehar vs. Ameya S/o Yashwant Mehar

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri. Vikrant Vishwarupe, Advocate for applicant.
Ms. Rakhi Sarkar, Advocate respondent.

CORAM : URMILA JOSHI-PHALKE J.

RESERVED ON : 10/02/2023

PRONOUNCED ON : 22/02/2023

Present application is filed by the applicant-wife for seeking transfer of matrimonial proceedings bearing No.A-858/2021 pending before the Family Court No.4 Bandra to Family Court at Nagpur.

2. As per the contentions of the applicant, her marriage was solemnized on 18/01/2013 with non-applicant, as per Hindu rituals at Nagpur. After marriage, she resumed co-habitation with the non-applicant at Mumbai. She was treated well for few days and thereafter, she was subjected to ill treatment due to which she constrained to leave matrimonial house. She has admitted to resume the co-habitation,

but there was no response from the non-applicant and suddenly, she received the notice of divorce petition filed by the non-applicant. The non-applicant has filed the divorce petition bearing No.A-858/2021 in Family Court at Bandra.

3. As per the contentions of the applicant that since she is deserted by the non-applicant, she is residing at Nagpur. The distance between the Nagpur and Mumbai is more than 700 kms. Now the applicant is staying at the mercy of her parents and brother. She is unable to travel from Nagpur to Mumbai. Since her desertion, non-applicant has not made any provision for her livelihood. Moreover, her parents are senior citizen and suffering from various ailments. She had also undergone laparoscopic surgery at Nagpur and she was advised to restrict her activities like frequent travel. Therefore, she filed this petition for transfer of the matrimonial proceedings from Mumbai to Nagpur.

4. As per her contention, considering the long distance between the two cities and taking into consideration her convenience, as well as circumstance that there is nobody in the family to escort her to attend the matrimonial proceedings, the same be transferred to Family Court at Nagpur.

5. Said application is strongly opposed by the non-applicant on the ground that the application is filed on false and baseless grounds. It is the contention of the non-applicant that applicant is educated lady serving as a Manager in multinational company in Mumbai. Therefore, travelling alone is no issue for her, as she has to travel alone for her job purpose. He denied the entire allegations made by the applicant against him and his family members. According to him, the application is filed only to harass him and no grounds are made out for transfer.

6. He further contended that applicant is doing job at Mumbai and earning handsome amount for her livelihood. Therefore, she can very well incur the expenses for the litigation. She is qualified software engineer and is in employment in IT field. She is very able to commute to Mumbai without any assistance and prayed for rejection of the application.

7. Heard learned Advocate Shri.Vikrant Vishwarupe for the applicant and Advocate Smt.Rakhi Sarkar for non-applicant.

8. Learned Advocate Shri Vishwarupe reiterated the same contentions as raised in the application and in addition submitted that

considering the applicant is a young lady, distance between Mumbai to Nagpur is more than 700 km. The convenient place for the applicant to attend the proceedings is at Nagpur.

9. He further submitted that the parents of the applicant are old aged, suffering from various ailments, as well as she has also undergone a laparoscopic surgery and it was advised to her not to travel frequently. In view of that application deserve to be allowed.

10. In support of the contentions learned Advocate for the applicant placed reliance on ***Mukta alias Lata w/o Sachin Chide vs. Sachin s/o Kamlakar Chide 2015 (5) Mh.L.J. page 848***, wherein it is observed that considering transfer of matrimonial proceedings, it would be convenient to wife to oppose the same on merits at Nagpur rather than at Wardha and the same was transferred from Wardha to Family Court at Nagpur.

11. He further placed reliance on ***N.C.V Aishwarya vs. A. S. Saravana Karthik Sha [Civil Appeal No. 4894 of 2022 in S.L.P No.16465 of 2021]*** wherein the Hon'ble Apex Court held 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 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 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.

12. On the basis of above decision, learned Advocate for the applicant submitted that in the present case also the applicant who is wife, staying at Nagpur and it is difficult for her to attend the proceedings at Mumbai and therefore, it be transferred from Mumbai to Nagpur.

13. Per contra learned Advocate Ms.Rakhi Sarkar for non-applicant submitted that applicant is not an illiterate lady, she is a software engineer and working in IT field including Hyderabad, Bangalore

etc. She is able to commute to Mumbai without any assistance. Further she is having handsome income to meet the cost of litigation, therefore, the grounds raised by the applicant are not available here. She submitted that on the contrary, applicant is staying and serving in Mumbai itself, but this application is filed only to harass him and therefore, application deserves to be rejected.

14. In support of the contentions, learned Advocate Ms.Rakhi Sarkar, placed reliance in the case of *State of Maharashtra vs. Dr Praful B. Desai (2003) 4 SCC 601*, wherein it is held that the evidence can be recorded by video-conferencing and it is being recorded and treated as in the presence of the accused. It is held by the Hon'ble Apex Court that Section 273 of the Criminal Procedure Code means actual physical presence in Court. We have to consider whether evidence can be led way of video-conferencing and held that recording of evidence through video-conferencing was not a violation of the Sixth Amendment (Confirmation Clause).

15. She further placed reliance on *Sanjay Bharadwaj vs. The State, [Cri.M.C.No. 491 of 2009 decided on 27/08/2010]* wherein High Court held

that no law provides that husband has to maintain a wife living separately of fact whether he earns or not.

16. She further placed reliance on the decision of Madhya Pradesh High Court in ***Mamta vs. Rajesh 2000(3) MPLJ 100*** wherein it is held that wife well qualified lady can attend the Court alone.

17. Lastly, she relied upon ***Anindita Das vs. Srijit Das (2006) 9 SCC 197*** wherein Hon'ble Apex Court observed that this Court was showing leniency to ladies. But since then it has been found that a large number of transfer petitions are filed by women taking advantages of the leniency taken by this Court. On an average at least 10 to 15 transfer petitions are on Board of each Court on each admission day. It is therefore, clear that leniency of this Court is being misused by the women. On the basis of this decision, she submitted that application deserves to be rejected.

18. Heard both the parties. Perused the application and also given consideration to the submissions made by both the sides.

It is not in dispute that the applicant is a software engineer and working in IT field. The

grounds raised by the applicant that she is staying at Nagpur, her parents are old aged, the distance between Nagpur and Mumbai is more than 700 km. and she is unable to travel alone as there is nobody to escort her to attend the proceedings.

During the submissions learned Advocate for the non-applicant filed an additional affidavit on record to the fact that now applicant is employed and settled in Mumbai and drawing income of Rs.13 Lakhs per annum with Mirum Ad Agency. The grounds raised by her are false and application deserve to be rejected.

19. In view of the said affidavit, Shri.Vishwarupe learned Advocate for the applicant was directed to make a statement. In view of that on 15/02/2023, learned Advocate Shri.Vishwarupe made a statement that at present applicant is serving in Mumbai on probation. Though the applicant has raised the ground that she is unable to travel to Mumbai alone, but the facts which are brought on record sufficiently shows that she is serving in Mumbai as software engineer in IT field and holding the responsibility in the said company. Therefore, her contention that she is unable to travel from Nagpur to Mumbai is baseless. Her contention that nobody in

her family to escort her is also appears to be baselsss one.

20. In view of the statement made by the learned counsel, no grounds are made out by the applicant to transfer the proceedings from Mumbai to Nagpur. Thus, this application has no merits and liable to be dismissed. The ground raised by the applicant that being a lady, she is unable to travel alone is also unacceptable, considering she is a qualified lady holding the responsibility in IT company. Thus, application is devoid of any merits and liable to be dismissed.

21. In the result, application is hereby rejected.

[URMILA JOSHI-PHALKE J.]