

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

MISC. CIVIL APPLICATION (TR) NO. 555/2022

Archana W/O Anil Bankar Vs Anil S/O Tulsiram Bankar

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

Court's or Judge's Order

Mr Zahid Shekhani, counsel for the applicant.

Mr Y.N. Thengre, counsel for the non-applicant.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 31/03/2023.

1. The present application is filed under Section 24 of the Code of Civil Procedure, 1908 for seeking transfer of the matrimonial proceedings bearing Petition No. A-975/2015 pending before the learned Judge, Family Court-3, Nagpur to the learned Judge, Family Court, Pune.

2. As per the contention of the applicant, her marriage was solemnized with the non-applicant on 19/5/1998 at Jai Jalaram Mangal Karyalaya, Nagpur. After marriage, she resumed cohabitation. She had two sons from the said wedlock. Due to the matrimonial differences between them, the applicant and non-applicant are residing separately. She had also lodged the report under Sections 498 and 494 of the Indian Penal Code against the non-applicant at Katol Police Station. The criminal proceedings vide R.C.C. No. 43/2015 (State Vs Anil Bankar) is pending before the Judicial Magistrate First Class, Katol. The

applicant further filed R.C.S. No. 661/09 under Sections 18 and 20 of the Hindu Adoption and Maintenance Act, 1956 for maintenance vide judgment dated 8/1/2014, the maintenance at rate of Rs. 8,000/- per month was granted to her as well as her two sons.

3. Now, her two sons are taking education at Pune, and therefore, she is residing at Pune at the mercy of her parents. Her parents are also old. There is nobody to assort her to attend the proceedings at Nagpur. The distance between the two cities is more than 750 k.m. She is unable to bear the cost of litigation. For all of these grounds, she requested for transfer of the matrimonial proceedings from the Family Court No.3, Nagpur to the Family Court, Pune.

4. The said application is strongly opposed by the non-applicant by filing a reply on the ground that the application is on the baseless ground. The applicant and non-applicant both are residents of Nagpur. Moreover, two sons have attended the age of majority and they have not required the attention regularly of the applicant therefore, the ground raised by the applicant is not just and proper.

5. He further contended that he is suffering from the deceased like Tuberculosis and Psoriasis and is taking treatment from Doctors in Nagpur. Therefore, it is difficult for him to attend the proceedings at Pune and prayed for the dismissal of the application.

6. Heard learned counsel Mr Mohd. Zahid Suleman Shekhani for the applicant, he reiterated the contentions and additionally he submitted that, considering the applicant is residing at Pune, she is unable to look after her two sons as her two sons are taking education. Though they have attended the age of majority, then also, constant attention is required of the mother and therefore, she is residing in Pune. The distance between the two cities is more than 750 km and taking into consideration, the convenience of the applicant/wife is looked into.

7. Per contra, the learned counsel Mr Y.N. Thengre for the non-applicant/husband submitted that applicant is also a resident of Nagpur. Both sons have already attended the age of majority and they can take care of themselves. The attention of the applicant is not required. The application is filed on the baseless ground. He further submitted that non-applicant is also suffering from Tuberculosis and Psoriasis and undergoing treatment. In such circumstances, it is difficult for him to attend the proceeding at Pune.

8. Heard both the sides. Perused the application.

9. Application is supported by the copies showing that the sons namely Harshal Anil Bankar and Bhuvan Anil Bankar both are taking education at Pune. Both the sons are admitted to Sinhgad Technical Education Societies, Pune for engineering studies. Thus, the contention of the

applicant that, her two sons are studying in Pune is supported by the documents. The other grounds raised by the applicant is that she is 48 years of age and suffering from hypertension.

10. The non-applicant has also raised ground that he has also suffering from Tuberculosis and Psoriasis. Therefore, it is difficult for him to attend the proceedings. Now, it is well settled that while considering the transfer application in matrimonial matters, the convenience of the applicant is to be taken into consideration. The distance between two place is more than 750 k.m. It is apparent from the record that applicant is residing in Pune to take care of her two sons, who are taking education at Pune, which appears to be just and reasonable ground for transfer of the matrimonial proceedings.

11. Now, it is well settled that, considering the transfer petition in the matrimonial matter, the convenience of the applicant/wife is to be taken into consideration. The Hon'ble Apex Court in case of *N.C.V. Aishwarya vs A.S. Sarvana Karthik Sha*¹ as 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

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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.

12. As noticed above, the applicant, who is residing in Pune which is at a distance of more than 750 k.m. and there is nobody to escort her to attend the proceedings at Nagpur. Considering the transfer application in matrimonial matters, the convenience of the wife is to be looked into. In view of the application deserves to be allowed. Hence, I proceed to pass the following order:

- a) The Misc. Civil Application is **allowed**.
- b) The Matrimonial Proceedings bearing No. A-975/2015 pending before the learned Judge, Family Court No.3, Nagpur be transferred to the Family Court, Pune.
- c) The Family Court No. 3, Nagpur shall send the record and proceedings to the Family Court, Pune.
- d) The parties shall remain present before the Family Court, Pune on 25/04/2023.

The Misc. Civil Application is disposed of in the above terms.