

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

MISC. CIVIL APPLICATION NO.590 OF 2022

Smt. Shipra w/o Mihir Jha ..vs.. Mr. Mihir Kumar Jha

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

Court's or Judge's Order

Advocate A.K. Sorde, for the applicant.

CORAM:- URMILA JOSHI-PHALKE, J.

DATED :- JANUARY 23, 2023.

Though notice of the application is served on the non-applicant by private mode as well as by WhatsApp the non-applicant has chosen not to appear and contesting the application.

2. Heard the learned Counsel for the applicant.

3. By this application, the applicant is seeking transfer of matrimonial proceeding No.A-380/2021 pending before the Principal Judge, Family Court at Akola to Principal Judge, Family Court at Nagpur.

4. As per the contention of the applicant, she is residing at Nagpur with her son and brother-in-law (brother of the non-applicant). Her marriage with the non-applicant was solemnized on 28/05/1998. After marriage, she joined the company of the non-applicant/husband and stay along with him for a long time. Thereafter, they shifted to Nagpur. The non-applicant has also purchased a residential accommodation at Nagpur but subsequently he has filed a false, concocted and frivolous Marriage Petition No. A-380/2021 in the

Family Court, Akola without bringing in the knowledge of the applicant. After that, he has not made any provisions for the expenses. The applicant is resided with the brother of non-applicant/husband, who is suffering from mental ailment like schizophrenia. In such circumstances, it is difficult for the applicant to attend the proceedings as there is nobody to look after her brother-in-law. The distance between Nagpur to Akola is 300 kilometers. On all above these grounds, she seeks the transfer of matrimonial proceedings from Akola to Nagpur.

5. Learned Counsel for the applicant is supported by the medical certificate, which shows that brother of the non-applicant/husband is suffering from chronic schizophrenia and is on medication. The Doctor's certificate further shows that the brother-in-law of the applicant is completely dependent on the daily attendant. The distance between Nagpur and Akola is also approximately 300 kilometers. The applicant has not filed any proceedings for any monetary relief. The non-applicant has also not made any provision for her livelihood.

6. The Hon'ble Apex Court in the case of ***N.C.V Aishwarya Vs. A.S. Saravana Karthik Sha*** (Civil Appeal No.4894/2022) by order dated 18/07/2022 held in paragraph No.9 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 socio-economic paradigm in the Indian society, generally, it is the wife's convenience which must be looked at while considering transfer."

7. In view of the reasons mentioned in the application supported by the medical evidence, the application deserves to be allowed, hence, same is allowed.

8. The matrimonial proceedings bearing Petition No. A-380 of 2021 pending before the Principal Judge, Family Court, Akola is transferred to the Principal Judge, Family Court at Nagpur.

9. The application is disposed of accordingly.