

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

MISC.CIVIL APPLICATION (TR) NO.647/2022

Mrs.Zahida w/o Naimuddin Sheikh

..VS..

Mr.Sheikh Naimuddin s/o Sheikh Gyasuddin

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

Court's or Judge's Order

.....
Shri S.B.Bangde, Counsel for the Applicant/Wife.
None for the Non-applicant/Husband.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 10/02/2023

1. By this application, the applicant/wife seeks transfer of matrimonial proceedings bearing RCS No.141/2022, filed by the non-applicant husband for restitution of conjugal rights, pending before learned Civil Judge Senior Division at Chandrapur to learned Judge of Family Court at Nagpur.

2. As per contentions of the applicant/wife, her marriage with the non-applicant/husband is performed on 1.11.2019 as per customs, rites and rituals of Islamic religion at Chandrapur. After the marriage, she resumed cohabitation. Out of their wedlock, she gave birth to a female child. After some days, the non-applicant/husband started ill-treating her. As she was not treated well, she was constrained to leave her matrimonial house. She attempted to resume cohabitation, however the non-applicant/husband has not allowed her and surprisingly filed proceedings for restitution of conjugal rights in the Court of learned Civil Judge Senior Division at Chandrapur. After she was deserted by the non-applicant/husband,

she was not made available any monetary provision by the non-applicant/husband for her livelihood. She has no source of income to bear cost of litigation. The distance between Nagpur and Chandrapur is more than 150 kilometers. She is residing at the mercy of her brother. If she attends proceedings at Chandrapur, there is nobody to escort her to Chandrapur and there is nobody to look after her small child as her brother has to leave house for work. In these circumstances, taking into consideration convenience of the applicant/wife, the said proceedings be transferred to learned Judge of the Family court at Nagpur.

3. Heard learned counsel Shri S.B.Bangde for the applicant/wife. Though Notice of the application is duly served, the non-applicant/husband remained absent and chose not to contest the matter.

4. Learned counsel Shri S.B.Bangde for the applicant/wife reiterates contentions as raised in the application. He submits that the applicant/wife is having a two-and-half-year daughter. If the applicant/wife attends proceedings at Chandrapur, there is nobody to look after her minor child and so also there is nobody to escort her to Chandrapur. He submits that health of the minor child may be affected if the applicant/wife takes the child along with her to Chandrapur which is 150 kilometers. In such circumstances, the transfer application be allowed.

5. I have considered submissions made by learned counsel Shri S.B.Bangde for the applicant/wife and perused the application. After service of Notice, the non-applicant chose not to contest the matter.

6. It is apparent that the applicant/wife is residing at Nagpur at the mercy of her brother, who is single bread earner of the family, she is having a minor child, the non-applicant/husband filed proceedings for restitution of conjugal rights in the Court at Chandrapur which is 150 kilometers away from Nagpur, there is nobody to escort her to Chandrapur for attending the said proceedings and there is nobody to look after her minor child in her absence.

7. Recently, the issue of inconvenience has been dealt with by the Honourable Apex Court in the case of NCV Aishwarya vs. A.S.Saravana Karthik Sha in Civil Application No(S). 4894/2022 decided on 18.7.2022 wherein the Honourable Apex observed 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 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. When two or more proceedings are pending in different Courts between the same parties which raise common question of fact and law, and when the decisions in the cases are interdependent, it is desirable that they should be tried together by the same Judge so as to avoid multiplicity in trial of the same issues and conflict of decisions.

8. As noticed above, the applicant/wife is a young lady having a minor child and it is very difficult for her to travel distance 150 kilometers from Nagpur to Chandrapur taking along with her the child as there is no one to escort her and look after her minor child in her absence. Also, it is just and proper to see convenience of the wife. Hence, I pass following order:

ORDER

(1) The Misc. Civil Application is **allowed**.

(2) RCS No.141/2022, filed by the non-applicant husband for restitution conjugal rights, pending before learned Civil Judge Senior Division at Chandrapur is transferred learned Judge of Family Court at

Nagpur.

(3) The parties to appear before learned Judge Family Court at Nagpur on 4.3.2023.

(4) It is directed that record and proceedings pending before learned Civil Judge Senior Division at Chandrapur be transferred to learned Judge of Family Court at Nagpur, before 4.3.2023.

With this, the Misc. Civil Application stands **disposed** of.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!

BHUSHAN
RANA
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2023.02.14
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