

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

MISC. CIVIL APPLICATION (TR) NO.736 OF 2022

Sou. Kajal w/o Akash Pandit

Vs.

Akash s/o Subhash Pandit

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

Court's or Judge's orders

Mr. P. S. Gaidhane, Advocate h/f Mr. N. D. Borkar, Advocate for applicant.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 06/02/2023

1. By preferring this application, applicant – wife is seeking transfer of the matrimonial proceedings i.e. Hindu Marriage Petition No.232 of 2021 pending on the file in the Court of Civil Judge Senior Division, Dhule to the Court of Civil Judge Senior Division, Mangrulpir, District Washim.

2. As per the contention of the applicant, her marriage with the non-applicant was solemnized on 04.02.2020. After marriage, she resumed cohabitation at the house of the non-applicant. However, she was not treated well and she constrained to leave the matrimonial house. She had filed the prosecution against the non-applicant under Section 498-A read with Section 34 of the Indian Penal Code. She had also filed application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 for seeking monetary

relief. However, the non-applicant has not made any provisions for her livelihood or maintenance and filed Hindu Marriage Petition bearing No.232 of 2021. It is for divorce. It is further contention of the applicant that the distance between Dhule and Mangrulpir is more than 350 Kms. The applicant is residing at the mercy of her parents. There is no male member available in her house to escort her to attend the proceedings. Moreover, she has no source of income to bear the litigation cost, and therefore the matrimonial proceeding be transferred from Dhule to Mangrulpir.

3. Notice of the said application is served on the non-applicant. Affidavit of service is filed on record by the applicant along with the Postal Track Report which shows that on 10.01.2023 itself the notice was served on the non-applicant. However, he has chosen not to appear and not to contest the application.

4. Heard learned Advocate Mr. Gaidhane for the applicant. He reiterated the same contentions, as per the application, in addition to that he submitted that the distance between the Karanja Lad to Dhule is about 350 Kms and it takes about eight hours by bus to reach from Karanja Lad to Dhule. There is nobody to escort the applicant to attend the proceedings. Moreover, she is unable to bear the cost of the litigation as no source of income is available to her. In support of his contention, he place reliance on **N.C.V. Aishwarya Vs. A. S. Saravana Karthik Sha** in Civil Appeal No. 4894 of 2022 decided on

18.07.2022 wherein the Hon'ble Apex Court ...

“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.”

5. As noticed above, the appellant is young lady staying along with her aged parents. The distance between the two places is more than 350 Kms. Admittedly, non-applicant has not made any provisions for her maintenance though she has filed an application for monetary relief under the provisions of Domestic Violence Act.

6. In the above circumstances, it is difficult for her to travel all the way from Karanja Lad to Dhue to attend the Court proceedings. Moreover, two proceedings are already pending in the Court of Mangrulpir, District Washim. It is well settled by the

various decisions of the Hon'ble Apex Court that while considering the transfer application in matrimonial proceedings the convenience of wife is to be considered. In view of that the application is allowed.

7. The Hindu Marriage Petition pending in the Court of Civil Judge Senior Division, Dhule bearing No.232 of 2021 be transferred to Civil Judge Senior Division, Mangrulpir, District Washim.

8. Misc. Civil Application No.736 of 2022 is disposed of.

9. The parties to appear before the Civil Judge Senior Division, Mangrulpir on 4th March, 2023.

(URMILA JOSHI-PHALKE, J.)

Sarkate