

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

MISC.CIVIL APPLICATION (TRANSFER) NO.740/2022

Sau.Reena w/o Vilas Ade

..VS..

Vilas s/o Sitaram Ade

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

Court's or Judge's Order

.....
Shri Harshvardhan Dhumale, Counsel for the Applicant/Wife.
None for the Non-applicant/Husband.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 06/02/2023

1. By this application, the applicant/wife seeks transfer of divorce petition bearing No.A-86/2022 pending before Family Court at Yavatmal to learned Civil Judge Senior Division at Pusad, district Yavatmal.

2. The applicant/wife contends that on 11.6.2015 her marriage was solemnized with the non-applicant/husband. After the marriage, she resumed cohabitation at her matrimonial house. However, she was mentally and physically harassed by the non-applicant/husband and her in-laws and, therefore, she was constrained to leave her matrimonial house. From their wedlock, she gave birth to a female child who is now six-year-old. As she was deserted by the non-applicant/husband, she was constrained to stay at her parental house at their mercy. Though she filed proceedings for grant of maintenance under Section 125 of the Code of Criminal Procedure, no monetary relief is granted to her as said proceedings are still pending before learned Judicial Magistrate First Class at

Pusad, district Yavatmal. Grounds raised to transfer the said divorce petition are that place where the divorce petition is pending is district Yavatmal and district Yavatmal is hundred kilometers from place Nandpur Moha (Izara), Wardu, taluka Pusad, district Yavatmal, the place where she resides. To attend divorce proceedings, she has to travel at Warud, district Yavatmal and, thereafter, she has to change a bus to proceed further to district Yavatmal. There is no direct conveyance available to her from her village to district Yavatmal. On the other hand, the non-applicant/husband possesses an agricultural land at Nandpur Moha-Aregaon, taluka Pusad, district Yavatmal and he frequently visits the agricultural land and looks after cultivation of the same. So, place Pusad is not inconvenient to be attended by the non-applicant/husband if the divorce petition is transferred at Pusad. Moreover, as parents of the applicant/wife are old aged, there is nobody to escort her to attending proceedings at district Yavatmal. As by now, the non-applicant/husband has not made any monetary provision in favour of the applicant/wife, the applicant/wife is unable to bear expenses of litigation.

Hence, the applicant/wife prays to transfer of divorce petition pending before Family Court at Yavatmal to learned Civil Judge Senior Division at Pusad, district Yavatmal.

3. Heard learned counsel Shri Harshvardhan Dhumale for the applicant/wife. Though served, the non-applicant/husband chose not to remain present and contest the matter.

4. Learned counsel Shri Harshvardhan Dhumale for the

applicant/wife reiterates contentions as are in the application and submits that to attend divorce proceedings, the applicant/wife has to travel at Warud, district Yavatmal and, thereafter, she has to change a bus to proceed further to district Yavatmal along with her a six-year-old daughter. There is no direct conveyance available to her from her village to district Yavatmal. For attending the divorce proceedings at district Yavatmal, she has to travel hundred kilometers from the place where she resides and for that she has to spend entire day. He further submits that considering the inconvenience causing to the applicant/wife, divorce petition pending before Family Court at Yavatmal be transferred to learned Civil Judge Senior Division at Pusad, district Yavatmal as place Pusad is not inconvenient for the non-applicant/husband since he is having an agricultural land at Nandpur Moha-Aregaon, taluka Pusad, district Yavatmal and he frequently visits the agricultural land and looks after cultivation of the same.

5. I have considered submissions made by learned counsel for the applicant/wife and perused the application. It is apparent that the applicant/wife is residing at village Nandpur Moha (Izara), Warud, taluka Pusad, district Yavatmal and the non-applicant/husband is also having an agricultural land at Nandpur Moha-Aregaon, taluka Pusad, district Yavatmal. It is also apparent that the applicant/wife has no direct conveyance available to her from her village to district Yavatmal for attending divorce proceedings and, therefore, she has to travel at Warud, district Yavatmal and, thereafter, she has to change

a bus to proceed further to district Yavatmal. Considering the inconvenience causing to the applicant/wife and considering proceedings for grant of maintenance under Section 125 of the Code of Criminal Procedure filed by the applicant/wife before learned Judicial Magistrate First Class at Pusad, district Yavatmal in which the non-applicant/husband is already attending, place Pusad, district Yavatmal is not inconvenient place for the non-applicant/husband.

6. 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.

7. In view of the above, the applicant-wife is a young lady aged about twenty-six years and she is not having any direct conveyance to attend proceedings from her village, the application deserves to be allowed. Hence, I proceed to pass following order:

ORDER

(1) The Misc. Civil Application is allowed.

(2) The divorce petition bearing No.A-86/2022 pending before Family Court at Yavatmal is transferred to learned Civil Judge Senior Division at Pusad, district Yavatmal.

The Misc. Civil Application is disposed of accordingly.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!

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