

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

MISC. CIVIL APPLICATION (TR) NO. 673/2022

Prajwala W/o Satyam Palaspagar Vs Satyam S/o Sahebrao Palaspagar

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

Court's or Judge's Order

Mr B.C. Chandrakapure, counsel for the applicant.

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

1. Present application is filed under Section 24 of the Code of Civil Procedure, 1908 for seeking transfer of the matrimonial proceeding HMP No A-544/21 pending before the Principal Judge Family Court, Thane to the Court of learned Civil Judge, Senior Division, Chandrapur.

2. The application is filed on the ground that the marriage between the applicant and the non-applicant was solemnized on 06/11/2009. After marriage, she resumed cohabitation. She had a male child from the said wedlock. However, there was a matrimonial dispute between them and therefore, she was constrained to leave the matrimonial house.

3. Now, the non-applicant has preferred the HMP bearing No. A-544/2021 in the Court of Principal Judge Family Court, Thane which is at a distance of 900 Km from Chandrapur. The applicant is residing at the

mercy of her parents at Chandrapur. The non-applicant has also not made any provision for maintenance or for her livelihood. Therefore, she is unable to incur the expenses towards the litigation also. Moreover, there is nobody to escort her to attend the proceedings.

4. Notice of the said application is though served on the non-applicant, the non-applicant failed to appear. The matter was also referred for mediation, before Mediator the non-applicant had appeared but the matter could not be settled. Thereafter, the non-applicant failed to appear before this Court also.

5. Considering the reasons mentioned in the application the distance between the two cities is more than 900 km. Moreover, she is having one son, who is taking education and there is nobody to escort her to attend the proceedings.

6. 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 the case of *N.C.V. Aishwarya vs A.S. Sarvana Karthik Sha*¹, wherein it is held that :-

“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

1 AIR 2022 SC 4318

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 socioeconomic paradigm in the Indian society, generally, it is the wife's convenience which must be looked at while considering transfer”.

7. As noticed above, 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 marriage petition No. A-544/2021 pending before the Principal Judge, Family Court, Thane is transferred to the Court of learned Civil Judge, Senior Division, Chandrapur.
- c) The Family Court, Thane shall send the record and proceedings of the marriage petition No.A-544/2021 to the Court of learned Civil Judge, Senior Division, Chandrapur for adjudication.

- d) The parties shall appear before the learned Civil Judge, Senior Division, Chandrapur on 20/04/2023.

The miscellaneous civil application is disposed of in the above terms.

JUDGE