

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

MISC. CIVIL APPLICATION NO.677 OF 2022

(Sau. Manisha w/o Ganesh Gaikwad Vs. Shri Ganesh s/o Vitthalrao Gaikwad)

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

Court's or Judge's Order

Shri P.S. Kadam, Advocate for the applicant.

CORAM:- URMILA JOSHI-PHALKE, J.

DATED :- JANUARY 30, 2023.

Heard.

2. By this application, the applicant is seeking transfer of matrimonial proceedings bearing No.A-309/2022 pending in the Family Court-2, Nagpur to the Civil Judge, Senior Division, Wardha.

3. As per the contention of the applicant that she has filed the application under Section 12 of the Protection of Women from Domestic Violence Act, 2005, the non-applicant is not attending the said proceedings. He has not made any provision for her maintenance. She is having four years of small child. There is no family member to escort her to attend the proceeding. Moreover, she is unable to bear the cost of the litigation as she has no source of income, and therefore, prayed for transfer of matrimonial proceeding from Family Court-2, Nagpur to the Civil Judge, Senior Division, Wardha.

4. Though notice of the application is served on the non-applicant he has chosen not to appear and not to contest the application. After service of notice one more

opportunity was granted to the non-applicant but he failed to appear and contesting the application.

5. Heard Shri Kadam, learned Counsel for the applicant. He reiterated the same contention raised in the application. In addition to that he invited my attention towards the roznama of the application filed under the Domestic Violence Act which shows that though the non-applicant served and appeared and subsequently remained absent before the Judicial Magistrate First Class, Wardha.

6. Considering the reasons mentioned in the application, it is apparent that the non-applicant has not made any provision for the livelihood of the applicant and her small child. The statement made in the application also shows that there is no male member in the family, and therefore, nobody is in the family to escort her to attend the proceeding. The contention of the applicant that no provision for her maintenance is made by the non-applicant due to which she is unable to bear the cost of litigation. Recently, 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 dealt with this issue and 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. As noticed above, the applicant is the young lady staying along with her mother and four years child and there is nobody to look after her small child if she attends the proceeding at Nagpur and having no source of income. It is difficult for her to attend the proceedings.

8. In view of above circumstances, the application deserves to be allowed. Hence, the following order :

(i) The application is allowed.

(ii) The matrimonial proceeding bearing No.A-309/2022 pending in the Family Court-2, Nagpur is transferred to the Civil Judge, Senior Division, Wardha.

9. The application stands disposed of.

(URMILA JOSHI-PHALKE, J.)