

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

MISC. CIVIL APPLICATION (TR) NO. 837/2022

Sau. Hemlata Tushar Gajghate Vs Shri. M. Tushar @ Tushar S/O Mahendra Gajghate

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

Court's or Judge's Order

Ms N.P. Dhoke, counsel h/f Mr M.V.Rail, counsel for the applicant.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 24/03/2023.

1. The present application is filed under Section 24 of the Code of Civil Procedure for the transfer of matrimonial proceedings from Family Court, Nagpur to Family Court, Pune.
2. Notice of the said application is already served on the non-applicant. Learned counsel for the applicant has already placed on record the track report which shows that the notice is already served on the non-applicant. None appeared for the non-applicant.
3. Heard Ms. Naina P. Dhoke, counsel holding for Mr. M.V. Rai, learned counsel for the applicant, she submitted that the marriage of the applicant and the non-applicant was performed on 24/11/2021. After marriage, though the applicant resumed cohabitation at the house of the non-applicant they could not develop a cordial relationship with each other, and the applicant was constrained to leave the matrimonial house.

4. Now, the non-applicant has filed a petition under Section 9 of the Hindu Marriage Act for the restitution of conjugal rights in the Court of Family Court Nagpur. Since the non-applicant has deserted her since residing at the mercy of her parents in Pune. The distance between Pune to Nagpur is more than 500 Km. It is difficult for the applicant to attend the proceedings by travelling all alone to the 500 km.

5. Moreover, the non-applicant has not made any provisions for her maintenance or for her livelihood, since she was deserted. Therefore, she is unable to bear the cost of the litigation. Considering the above these grounds, the matrimonial proceedings bearing No. 968/2022 pending before the Family Court, Nagpur be transferred to the Family Court, Pune.

6. Heard learned counsels. Perused the application.

7. There is no dispute that distance between the Nagpur and Pune is more than 500 Km. There is also nothing on record to show that the non-applicant has made any provisions for her maintenance or her livelihood of the applicant since she is residing at her parent's house.

8. Considering the distance between the two cities, it is highly inconvenient for the applicant to attend the proceedings at Nagpur by travelling more than 500 Kms.. It is now well settled that while considering the transfer application in matrimonial proceedings, the convenience of the wife is to be looked into. This issue is also dealt by the

Hon'ble Court recently 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 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.”

9. As noticed above, considering the transfer application in matrimonial matters, the convenience of the wife is to be looked into. In view of the above, the application deserves to be allowed. Hence, I proceed to pass following order.

- a) The Misc. Civil. Application is **allowed**.
- b) The Matrimonial proceedings No. A-968/2022 is pending before the Family Court, Nagpur is transferred to Family Court, Pune.
- c) The Family Court, Nagpur shall send the record and proceedings to the Family Court, Pune for adjudication.

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- d) The parties to remain present before the Family Court, Pune on 20/04/2023.

The Misc. Civil Application is disposed of in the above terms.

JUDGE