

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

MISC. CIVIL APPLICATION (TR.) NO.153 OF 2022

Sau Deepa w/o Rakesh Kandekar

Vs.

Rakesh s/o Daujee Kandekar

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

Court's or Judge's orders

Mr. Anantha Anirudha, Advocate h/f Mr. Ashish Kadukar, Advocate for the applicant.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 15/02/2023

1. By preferring this application, applicant - wife is seeking transfer of the matrimonial proceedings bearing Petition No.A-251/2021 pending before the learned Family Court, Nagpur to the learned Family Court, Osmanabad.

2. As per the contention of the applicant that her marriage was performed with the non-applicant on 20.6.2017 at Paranda, District Osmanabad. After marriage, she resumed the cohabitation at the house of non-applicant, however she was not treated well. The non-applicant is highly qualified person and was serving initially in USA, thereafter he shifted to Nagpur. She was not treated well and subjected for the atrocities, therefore she constrained to leave matrimonial house and now residing at the mercy of her parents. Recently her mother expired on 25.11.2021. The ground raised

by the applicant for the transfer is that recently non-applicant has filed petition for divorce before the Family Court, Nagpur. The distance between Nagpur to Osmanabad is approximately 650 Kms. It is submitted that considering the distance, it is difficult for the applicant to travel all alone to attend the proceedings. There is nobody in the family to escort her to attend the proceedings. It is further contended that after desertion non-applicant has not made any provisions for her maintenance, therefore she is unable to bear the cost of litigation. For all above these grounds, she claims the transfer of the matrimonial proceedings from Nagpur to Osmanabad.

3. Notice of the said application though served on the non-applicant, he failed to appear. The notice of the application is also served on the learned Counsel for the non-applicant, who is representing the non-applicant in the Family Court, Nagpur. Affidavit is filed by the applicant to that extent.

4. Heard learned Advocate Mr. Anirudha, for the applicant. He reiterated the contentions and submitted that considering the reasons mentioned in the application, the place i.e. Family Court, Nagpur is not at all convenient for the applicant to attend the proceedings. He further submitted that this aspect is well settled by the catena decisions of this Court as well

as by the Hon'ble Apex Court that the convenience of the wife in matrimonial proceedings is to be considered while considering the transfer application and prayed for transfer of the petition to the Family Court, Osmanabad.

5. I have perused the application and the submissions of the learned Advocate. There is no dispute that petition is filed at Nagpur whereas the applicant is residing at Osmanabad. It is also not disputed that the distance between Nagpur and Osmanabad is more than 500 Kms. The reasons mentioned in the application appears to be justified one as it is difficult for her to attend the proceedings all alone by travelling more than 500 Kms. The applicant further contends that her mother recently expired on 25.11.2021. In the light of the above circumstances, the grounds raised by the applicant are to be considered. Hon'ble Apex Court in **N.C.V. Aishwarya Vs. A. S. Saravana Karthik Sha reported in AIR 2022 SC 4318** held that the convenience of the wife is to be considered while considering the transfer application in matrimonial proceedings. In para No.9 following observations is made by 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."

6. As noticed above, the applicant who is residing at Osmanabad which is more than 500 Kms and there is nobody to escort her to attend the proceedings. Under the above circumstances, it is difficult for her to travel all the way from Osmanabad to Nagpur to attend the proceedings of the case filed by the non-applicant seeking annulment of the marriage. Therefore it would be just and proper to transfer the proceeding at Osmanabad, considering the convenience of the applicant – wife. In view of that application is allowed.

7. The matrimonial proceedings pending before the Family Court, Nagpur be transferred to the Family Court at Osmanabad.

8. The record and proceedings be sent to the Family Court, Osmanabad.

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9. Parties to appear before the Family Court,
Osmanabad on 13.03.2023.

10. Misc. Civil Application is disposed of.

(URMILA JOSHI-PHALKE, J.)

Sarkate