

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

MISC. CIVIL APPLICATION NO.743 OF 2022

(Sau. Kanchan @ Tina Nilesh Ghodke vs. Nilesh s/o Haridas Ghodke)

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

Court's or Judge's Order

Shri S.B. Gandhe, Advocate for the applicant.

CORAM:- URMILA JOSHI-PHALKE, J.

DATED :- JANUARY 09, 2023.

Heard.

2. As per the order dated 09/12/2022, the non-applicant has served on 30/11/2022 however, none appeared and in order to afford an opportunity to the non-applicant, matter was listed on 16/12/2022, and thereafter, on today i.e. on 09/01/2023.

3. By this application, under Section 24 of Code of Civil Procedure, the applicant is seeking transfer of petition pending before the Family Court, Yavatmal to the Family Court at Amravati.

4. It is the case of the applicant that the applicant is the legal wedded wife of the non-applicant and their marriage was solemnized on 18/06/2017 at Amravati. After marriage, the applicant was ill-treated for unlawful demand and she constrained to leave the matrimonial house. Thereafter, the non-applicant has not made any provision for her maintenance and for her livelihood and suddenly, the applicant had received a notice of the Family Court, Yavatmal in respect of petition No.A-90/2022 filed by the non-applicant/husband under

Section 9 of the Hindu Marriage Act, 1955, for restitution of conjugal rights.

5. The applicant further contended that she has no source of income. The distance between the Amravati and Yavatmal is more than 120 kilometres. As she is not having any source of income, it is difficult for her to attend the Court proceedings and engage the Advocate. In view of that the matter be transferred from the Family Court, Yavatmal to the Family Court at Amravati.

6. Notice of the said application though served on the non-applicant, he choose to remain absent. After service of notice also, one opportunity was given to the non-applicant to appear, however he failed to appear, therefore, the application is to be decided in his absence.

7. Learned Counsel for the applicant placed reliance on the decision of the Hon'ble Supreme Court in the case of ***N.C.V. Aishwarya Vs. A.S. Saravana Karthik Sha*** decided on 18/07/2022 wherein the Hon'ble Apex Court held in paragraph No.9 which is reproduced hereunder :

“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."

8. Here also the applicant is residing in Amavati at her parents house. *Prima facie*, it appears that the non-applicant has not made any provision for her livelihood or for her maintenance.

9. Considering the reasons mentioned in the application and in view of the observation of the Hon'ble Apex Court, application deserves to be allowed. In the result, I proceed to pass the following order :

(i) The application is allowed.

(ii) The petition No.A-90/2022 pending before the Family Court, Yavatmal is transferred to the Family Court, Amravati.

(URMILA JOSHI-PHALKE, J.)

*Divya