

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

MISC.CIVIL APPLICATION (TRANSFER) NO.883/2022

Shri Prashant s/o Anandrao Rakhunde and ors

..VS..

Sou.Sonali w/o Prashant Rakhunde

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

Court's or Judge's Order

.....
Shri R.S.Thengne, Counsel for the Applicants.
Ms S.P.Giratkar, Counsel for the Non-applicant.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 08/03/2023

1. By this application under Section 24 of the Code of Civil Procedure, applicants seeks transfer of proceeding bearing Criminal Misc.Application No.2257/2021 pending on the file of learned 18th Joint Civil Judge Senior Division and Special Court under the D.V.Act at Nagpur to learned Judge of the Family Court No.4 at Nagpur.

2. As per contentions of applicants, the non-applicant is legally wedded wife of applicant No.1 and their marriage was solemnized on 2.1.2019. After the marriage, the non-applicant/wife resumed cohabitation. However, she left her matrimonial house due to some disputes and is residing at her parental house at Nagpur. Now, she filed proceeding bearing HMP No.1172/2021 for divorce which is still pending before learned Judge of the Family Court at Nagpur. She has also filed proceeding for monetary relief bearing Criminal Misc.Application No.2257/2021. As per contentions of applicants, if proceeding in Criminal Misc.Application No.2257/2021 pending on the file of learned 18th Joint Civil Judge Senior Division and Special Court under the D.V.Act at Nagpur is transferred to learned

Judge of the Family Court No.4 at Nagpur whereat proceeding bearing HMP No.1172/2021 is pending, both proceedings can be disposed of by one Court and, therefore, there would not be any conflicting decisions and no prejudice would be caused to the non-applicant/wife.

Hence, applicants pray that the application be allowed.

3. Learned counsel Ms S.P.Giratkar for the non-applicant/wife strongly opposes the application on the ground that the Family Court has no jurisdiction to adjudicate proceedings under the provisions of the D.V.Act.

4. Heard learned counsel Shri R.S.Thengne for applicants and learned counsel Ms S.P.Giratkar for the non-applicant/wife. Also, perused the application.

5. Learned counsel Shri R.S.Thengne for applicants submits that two proceedings pending before two different Courts can be decided by one and the same Court to avoid conflicting decisions and, therefore, he prays for transfer of proceeding. Insofar as objection raised by learned counsel Shri S.P.Giratkar for the non-applicant/wife is concerned, learned counsel Shri R.S.Thengne for applicants placed reliance upon a decision of this Court principal seat at Bombay in the case of Mr.Sanket Sanjeev Khanolkar vs. Mrs.Surabhi Sanket Khanolkar, reported in 2021(5) ALL MR 306 wherein this Court has held that Section 7(2)(b) of the Family Court Act read with Section 26 of the D.V.Act gives jurisdictional power to Family Courts to entertain application seeking relief under provisions of Sections 18 to 22 of the D.V.Act. Two different Courts dealing with dispute based on same set

of facts and circumstances may arrive at two different conclusions, resulting in conflicting decisions. So, to avoid such conflicting decisions, High Court can step into power under Section 24 and, therefore, application under the D.V.Act was transferred to the Family Court.

6. In view of the the above observations by this Court, there is no reason to take a different view as specif powers and jurisdiction are provided under Section 7(2)(b) of the Family Court Act read with Section 26 of the D.V.Act giving jurisdictional power to Family Court to entertain applications.

7. In this view of the matter, the application deserves to be allowed. Hence, I pass following order:

ORDER

(1) The Misc. Civil Application is **allowed**.

(2) The proceeding bearing Criminal Misc.Application No.2257/2021 pending on the file of learned 18th Joint Civil Judge Senior Division and Special Court under the D.V.Act at Nagpur be transferred to learned Judge of the Family Court No.4 at Nagpur.

(3) The parties shall appear before learned Judge of the Family Court No.4 at Nagpur on 1.4.2023.

With this, the Misc. Civil Application stands **disposed** of.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!

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