

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

MISC. CIVIL APPLICATION NO. 820/2022

Vrushali Vivek Warghat V/s Vivek Bhimrao Warghat

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

Court's or Judge's Order

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

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 01/03/2023.

1. Present application is filed by the applicant/wife, for seeking transfer of matrimonial proceedings bearing No. HMP No. 99/2022, pending before the learned Civil Judge, Senior Division, Darwha to the Family Court, Amravati.

2. As per the contention of the applicant/wife, her marriage with the non-applicant was solemnized on 10/11/2019 at Amravati. After marriage, she resumed cohabitation but she was not treated well. From the said wedlock, she delivered a female child. She was ill-treated on that count also that, she has not delivered the boy child. Therefore, she constrained to leave the matrimonial house. Therefore, she had also lodged the FIR against the non-applicant and his family members vide crime No. 736/2021 under Sections 498-A, 323, 504, 506 read with Section 34 of the Indian Penal Code. Due to ill-treatment at the hands of the non-applicant and his family members, she was constrained to stay at the mercy of her parent's house at

Amravati. She had also filed an application for grant of maintenance under Section 125 of the Code of Civil Procedure bearing Petition No. E-50/2021.

3. The non-applicant has filed the petition for divorce which is pending in the Court of the Civil Judge, Senior Division, Darwha.

4. As per the contention of the applicant, the distance between Amravati to Darwha is around 100 km. she is having small children of two years and it is difficult for her to attend the proceedings along with the child.

5. As per her contention that after she was deserted by the non-applicant, he has not made any provision for her maintenance or for her livelihood. Therefore, she is unable to bear the cost of the litigation. At the same time, she has already filed two proceedings which are pending in the Court of Amravati. Therefore, no prejudice will be caused to the non-applicant, if this proceedings is also transferred to the Family Court Amravati.

6. It is further her contention that the non-applicant has already put his appearance in both the proceeding and he is attending the proceedings at Amravati also. She further contended that as she is residing along with her parents and her parents are old aged and there is nobody to escort her to attend the proceedings. In view of that, she

prayed for the transfer of the petition bearing marriage petition No. 99/2022 in the Court of Family Court, Amravati.

7. Notice of the said application though served by the non-applicant. When the matter was called out, none appears on behalf of the non-applicant. Whereas, opportunities are granted to the non-applicant to appear and contest the application. However, he has not availed for the same.

8. Heard learned counsel Mr S.B. Gandhe for the applicant.

9. He reiterated the contention of the applicant. Additionally, he has submitted that it is highly inconvenient for the applicant to attend the proceedings by travelling 100 km along with two years child. Moreover, she is unable to bear the cost of litigation as no provision is made by the non-applicant for her maintenance.

10. Perused the application and submission of the learned counsel for the applicant.

11. The grounds raised are that, it is highly inconvenient for the applicant to attend the proceedings. Moreover, she is unable to bear the cost of the litigation. The distance between the two places is approximately 100 km., the applicant is having a small child of two years. Considering the grounds raised, the convenience of the applicant/wife is in issue in the present proceedings. The said issue is also dealt by

the Hon'ble Apex Court in the case of *N.C.V. Aishwarya v. A.S. Saravana Karthik Sha*¹

12. In the present case also, the applicant has already preferred the application under Section 125 of the Code of Criminal Procedure for seeking maintenance and is pending in the Family Court, Darwha. If the present proceedings is also transferred to the Family Court then there would not be a conflict decision by two different Courts. No prejudice will be caused to the non-applicant, he is already attended the proceedings at Amravati. To avoid a conflict in the decision, it would be just and proper to transfer the marriage petition from the Civil Judge, Senior Division, Darwha to Family Court, Amravati.

13. In view of that application deserves to be allowed. Accordingly, I proceed to pass the following order.

- a) The Misc. Civil Application (Tr) No. 820/2022 is allowed.
- b) The matrimonial proceedings bearing Hindu Marriage Petition No. 99/2022 pending in the Court of the learned Civil Judge, Senior Division, Darwha to the learned Family Court, Amravati for disposal.
- c) The Court of the learned Civil Judge, Senior Division, Darwha shall sent record and proceedings to the Family Court, Amravati.

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- d) Parties to appear before the Family Court, Amravati on 17/03/2023.
- e) The Family Court, Amravati shall consider the request of Non-applicant for his appearance through video conference, wherever such requests is made.

JUDGE