

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

MISC. CIVIL APPLICATION NO.771 OF 2022

(Smt. Bhavika w/o Haresh Gajjar Vs. Haresh s/o Vinodbhai Gajjar)

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

Court's or Judge's Order

Shri V.V. Bharadwaj, Advocate for the applicant.
Shri A.N. Vastani, Advocate for the non-applicant.

CORAM:- URMILA JOSHI-PHALKE, J.

DATED :- FEBRUARY 20, 2023.

Heard.

2. By preferring this application, the applicant-wife is seeking transfer of the matrimonial proceeding bearing HMP No.239/2022 filed by the non-applicant in the Court Civil Judge, Senior Division, Gondia to the Family court, Nagpur.

3. As per the contention of the applicant, her marriage with the non-applicant was solemnized on 27/11/2020 at Gondia. After marriage she resumed cohabitation at the house of the non-applicant however, she was not treated well, and therefore, she constrained to leave the matrimonial house.

4. It is further the contention of the applicant that after the non-applicant has deserted her, he has not made any provision for her maintenance. It is further contended that she was ill-treated to such an extent that it was difficult for her to lead the matrimonial life along with the non-applicant, and therefore, she was constrained to leave matrimonial house. Thereafter no care was taken as

the applicant was pregnant which also constrained her to undergo an abortion. Thereafter the non-applicant had filed divorce petition in the Court of Civil Judge, Senior Division, Gondia. Now the applicant has also filed an application in the Family Court for maintenance. The non-applicant is attending the said proceeding at Nagpur.

5. It is further contended that the distance between the Nagpur to Gondia is 180 kilometers. The father of the applicant is old aged person. Moreover, he met with an accident and sustained brain injury, therefore, he is suffering the disability of memory loss and there is nobody to escort her to attend the proceedings.

6. The applicant and her mother is housewife. She is unable to bear the cost of litigation as she has no source of income.

7. Considering all these grounds the matrimonial proceeding filed by the non-applicant in the Court of Civil Judge, Senior Division, Gondia be transferred to the Family Court, Nagpur.

8. Said application is strongly opposed by the non-applicant on the ground that the maintenance application is filed after thought. After non-applicant has filed divorce petition, he further denied all the allegations made by the applicant by filing reply. It is admitted that the non-applicant is ready to bear the travelling expenses of the applicant as well as of one companion of the applicant, whenever she attends the proceeding. As he has ready to bear the expenses of the applicant for attending the proceeding he prayed for rejection of the application.

9. Heard Shri Bharadwaj, learned Counsel for the applicant. He reiterated the grounds mentioned in the application. In addition to that he submitted that the applicant who is hardly 28 years of age having no support except her father who is now met with an accident and suffering from disability of memory loss. Her mother is also housewife. Moreover, non-applicant has not made any provision for her livelihood after she was deserted. Thus she is unable to bear the cost of litigation. Moreover, distance between two places is more than 180 kilometers, and therefore, for the sake of inconvenience of the applicant-wife the matter be transferred from Gondia to Nagpur. He further submitted that non-applicant is already attending the matrimonial proceeding at Nagpur. So no prejudice will be caused to him if the proceeding which is filed by him in the Court of Civil Judge, Senior Division, Gondia is transferred to the Family Court at Nagpur.

10. In support of his contention he placed reliance on the decision of this Court in Misc. Civil Application No.284/2022 with Misc. Civil Application No.191/2022 decided on 17/08/2022.

11. On the other hand, Shri Vastani, learned Counsel for the non-applicant opposed the application on the ground that the non-applicant is a businessman whereas applicant is a housewife. It is difficult for the non-applicant to attend the proceeding at Nagpur. He is ready to bear the expenses of the applicant as well as one

companion who would will accompany the applicant to attend the proceeding. The facility of Video Conferencing is also available to the applicant whenevers he needs it. He further submitted that the allegations made against the non-applicant by the applicant are baseless. It is the applicant who left the company of the non-applicant and after thought filed application for maintenance. Thus, no grounds are made out by the applicant for transfer. Hence, application deserves to be rejected.

12. Perused the application. Heard both the sides.

13. It is apparent that the allegations and counter allegations are made by the applicant as well as by the non-applicant against each other. Learned Counsel for the applicant invited my attention towards the grounds mentioned in the application regarding the ill-treatment. Admittedly, the issue before this Court is regarding whether the grounds are made out for the transfer of the proceeding or not. The genuineness of the allegations is to be considered by the trial Court by appreciating the evidence. The applicant has raised the ground regarding her inconvenience as well as she is unable to attend the proceeding as nobody is in the house to escort her to attend the proceeding at Gondia which is 180 kilometers. It is further submitted by the applicant that no provision is made out by the non-applicant for her livelihood, and therefore, she is unable to bear the cost of litigation.

14. On the other hand, non-applicant has shown the willingness to bear the expenses of the applicant as well as one companion. As per the contention of the

learned Counsel for the applicant, she is residing at the mercy of her parents, her father is old aged person and met with an accident and having memory loss issue, therefore, he is unable to escort her and besides her father there is nobody in the house to escort her to attend the proceedings.

15. It is an admitted fact that the non-applicant is attending the maintenance proceeding at Nagpur. It is now well settled by the catena of decisions of the Hon'ble Apex Court that while considering the transfer application in matrimonial proceeding, the convenience of the wife is to be taken into consideration. Recently, the Hon'ble Apex Court in the case of ***N.C.V. Aishwarya Vs. A.S. Saravana Karthik Sha*** (Civil Appeal No.4894/2022) by order dated 18/07/2022 dealt with this issue and held in paragraph No.9 as follows:

“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."

16. As noticed above, the applicant is a young lady aged about 28 years old staying along with her old aged parents. Her father is old aged also met with an accident and sustained brain injury. Under the above circumstances, it is difficult for her to travel all the way from Nagpur to Gondia along with her father. It is further difficult for her to proceed all alone to attend the proceeding. Though the non-applicant has shown his willingness to bear the expenses of the applicant as well as one companion. However, his conduct shows that he has not made any provision since the applicant left his house is also to be taken into consideration. If the non-applicant was intending to make any provision because of which she can attend the proceeding at Gondia definitely he would have made provision for her maintenance or for her livelihood. Now he is showing willingness to make an expenses when the prayer of transfer is made.

17. In view of the decision on which the applicant has placed reliance, this Court has also considered the aspect of convenience of the wife in matrimonial proceeding. Though learned Counsel for the non-applicant placed reliance on the judgment of this Court in Misc. Civil Application No.1045/2012 decided on 21/12/2013, the facts shows that the undertaking was given by the non-applicant before the Court, and therefore, Court held that

the applicant can conveniently attend the proceeding at Nagpur. Here no such undertaking is given. Moreover, the maintenance amount was also paid by this Court to the applicant in the cited case law. Here the facts are showing that no provision is made out by the non-applicant for the maintenance of the applicant, and therefore, she is unable to bear the cost of litigation.

18. In view of the judgment of the Hon'ble Apex Court, the convenience of the applicant – wife is to be taken into consideration however, it is also just and proper that both the cases i.e. maintenance and divorce petition to be decided by one Court to avoid the conflicting decisions. As noted above, the non-applicant is already attending the proceeding at Nagpur, therefore, no prejudice will be caused to him if the proceeding which is filed by him in the Court of Civil Judge, Senior Division, Gondia is transferred to the Family Court at Nagpur. The facility of Video Conferencing is also available to the non-applicant whenever he needs it. In the result of the above, I proceed to pass the following order :

- (i) The application is allowed.
- (ii) The matrimonial proceeding bearing No.HMP No.239/2022 pending before the Civil Judge, Senior Division, Gondia is transferred to the Family Court, Nagpur.
- (iii) The Civil Judge, Senior Division, Gondia shall send the record and proceedings to the Family Court, Nagpur.

(iv) The Family Court Nagpur shall consider the prayer of the effect of attending the proceeding through Video Conferencing if such prayer is made by the non-applicant at any point of time.

(v) The parties to appear before the Family Court, Nagpur on 09/03/2023.

(URMILA JOSHI-PHALKE, J.)

**Divya*