

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

MISC. CIVIL APPLICATION (TR) NO. 775/2022

Pallavi w/o Amit Gosavi V/s Amit s/o Shamgir Gosavi

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

Court's or Judge's Order

Ms M.R.Kavimandan, counsel for the applicant.

Mr. P.K. Raulkar, counsel h/f Mr G.G. Mishra, counsel for the non-applicant.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 24/03/2023.

1. Heard.
2. The present application is filed for seeking transfer of the matrimonial proceeding No. 474/2022 filed by the non-applicant in the Family Court No.1, Solapur to the Civil Judge, Senior Division, Pusad.
3. As per the contention of the applicant, her marriage with the non-applicant was solemnized on 20/02/2022. After marriage, she resumed cohabitation at the house of the non-applicant. However, the non-applicant has not been treated well and therefore, she constrained to leave the matrimonial house. Since then, she is residing at the mercy of her parents, at Pusad. She is also pursuing her education at Pusad. Since then, she was deserted by the non-applicant, and the non-applicant has not made any provision for her maintenance or her livelihood. Therefore, she filed an application under Section 12 of the Protection of

Women from Domestic Violence Act, 2005 for seeking monetary relief bearing PWDVA No. 72/2022 and also filed an application under Section 125 of the Code of Criminal Procedure, 1973 before the learned Judicial Magistrate First Class, Pusad.

4. In both application, the non-applicant is attending the proceedings. Now, the non-applicant has preferred the marriage petition in the Family Court No.1, Solapur, which is at a distance of more than 350 km. As the non-applicant has not made any provision for her maintenance or for her livelihood, she is unable to bear the cost of the litigation as well as there is nobody to escort her to attend the proceedings at Solapur which is at a distance of more than 350 km. For all above the grounds, she is seeking transfer of the matrimonial proceedings.

5. The said application is strongly opposed by the non-applicant on the ground that the application is groundless, baseless and deserves to be rejected.

6. Heard both the sides. Perused the application.

7. It is not in dispute that the applicant has preferred the application under the provisions of the Protection of Women from Domestic Violence Act, 2005 as well as under Section 125 of the Code of Criminal Procedure, 1973 for monetary relief wherein the non-applicant is attending the proceeding. Now, the

non-applicant has filed the marriage petition for restitution of conjugal rights. If the marriage petition filed by the non-applicant is transferred at the Civil Judge, Senior Division, Pusa, no prejudice will be caused to the non-applicant.

8. Considering the convenience of the applicant and the other two proceedings are already pending in the Court of Judicial Magistrate, First Class, Pusa, it will be convenient for both parties to attend the proceedings at one and the same place.

9. Now, it is well settled that, considering the transfer petition in the matrimonial matter, the convenience of the applicant/wife is to be taken into consideration. The Hon'ble Apex Court in the case of *N.C.V. Aishwarya vs A.S. Sarvana Karthik Sha*¹, wherein it is held that :-

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 socioeconomic paradigm in

1 AIR 2022 SC 4318

the Indian society, generally, it is the wife's convenience which must be looked at while considering transfer.

10. In view of the reasons mentioned in the application and considering the convenience of the applicant/wife, the application deserves to be allowed. Hence, I pass the following order.

- a) The marriage petition No. 474/2022 be transferred to the learned Civil Judge, Senior Division, Pusad from the learned Family Court No.1, Solapur.
- b) The learned Family Court No.1, Solapur shall send the record and proceedings of matrimonial proceedings bearing marriage Petition No. 474/2022 to the learned Civil Judge, Senior Division, Pusad for adjudication.
- c) The parties shall appear before the learned Civil Judge, Senior Division, Pusad on 15/04/2023.

The miscellaneous civil application is disposed of in the above terms.

JUDGE