

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

MISC. CIVIL APPLICATION (Tr) NO. 826/2022

Sau. Trupti Nilesh Dinkar V/s Nilesh Ashok Dinkar

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

Court's or Judge's Order

Mr U.J. Deshpande, Advocate for the applicant.

Mr Deoul Pathak, Advocate for the non-applicant.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 17/02/2023.

1. By this application, the applicant/wife is seeking transfer of the matrimonial proceedings bearing HMP No. 346/2019 pending in the Court of learned Civil Judge, Senior Division, Sangamner to the learned Family Court, Akola for trial in accordance with law.

2. As per the contention of the applicant, her marriage with the non-applicant was performed on 25/11/2013. After marriage, she resumed cohabitation at the house of the non-applicant but she was never treated with due dignity and therefore, she constrained to leave matrimonial house.

3. It is alleged by her that, she and her small child were driven out of her matrimonial house on 07/02/2022 by the non-applicant and therefore, she constrained to stay at the mercy of her parents house. It is further her contention that, the distance between the Akola and Sangamner is approximately 400 Km. She is a house wife and it is difficult

for her to travel alone from Akola to Sangamner along with small child aged about 6 years.

4. It is further contended that, if she attends the proceedings at Akola then she can take her child along with her as there is nobody to look after the child. Her parents are having various ailments and suffering from the health issue. Her father had suffered two heart attacks and is also suffering from Amnesia. Her mother is also patient of severe heart disease. Thus, there is nobody to escort her to attend the proceedings.

5. It is further her contention that, after her desertion, non-applicant has not made any provision for her maintenance and thus she is unable to bear the cost of litigation. In view of all grounds, she claimed transfer of the proceedings from Sangamner to Akola.

6. The said application is strongly opposed by the non-applicant/husband on various grounds. As per the contention of the non-applicant/husband, he had filed matrimonial proceedings in the year 2019. Applicant has avoided to appear in the proceedings and suddenly in the year 2022, she appeared in the proceedings. She has also filed a petition for grant of maintenance before the Family Court, Akola after three years, which is after thought and now this application is filed for transfer of the proceedings i.e. after three years only to harass the non-applicant.

7. It is further submitted that, the non-applicant is ready to pay the conveyance allowance to the applicant as well as one person who will attend the proceeding along with the applicant. He submitted that there is no merit in the application and hence, application deserves to be rejected.

8. Heard learned Advocate Shri U.J. Deshpande, for the applicant. He reiterated the said contention and submitted that the applicant is a housewife, she has small child of six years. Non-applicant has not made any provision for her maintenance, after she was deserted and she is unable to bear the cost of the litigation. He further submitted that the convenience of the wife is to be taken into consideration, while appreciating the merits of the case and prayed for transfer of the proceedings.

9. On the other hand, learned advocate for the non-applicant, Shri Deoul Pathak submitted that, no reasonable grounds are available to the applicant for transferring the proceedings.

10. This application is filed only to harass the non-applicant. Applicant put her appearance in the matrimonial proceedings after three years and also filed an application for maintenance in the Family Court, Akola after three years. The entire conduct of the applicant is sufficient to show that, only to harass the non-applicant she has filed this proceedings. The application is devoid of any merits and liable to be dismissed.

11. Heard both the sides. Perused the application.

12. The foremost question arises for the consideration is that, whether inconvenience would be caused to the applicant, if she has to attend the proceedings at Sangamner. It is not in dispute that, the distance between the Akola to Sangamner is 400 kms. It is also not in dispute that, the applicant is having six year old child and she has to travel along with child, if she attends the proceedings at Sangamner. It is also not disputed that, the applicant is residing along with her parents at Akola.

13. As per the submissions of the learned Advocate for the applicant, Shri U.J. Deshpande, if the applicant is forced to attend the proceedings at Sangamner, she has to travel all alone as there is nobody to escort her to attend the proceedings at Sangamner, as her father is suffering from heart disease as well as Amnesia. Her mother is also having ailment of heart disease. In respect of his contention, he placed reliance on the medical papers, discharge card, scan reports etc., which show that the parents of the applicant is suffering from various ailments.

14. The main ground, on which the application of the applicant is opposed is that, this application is filed after three years as well as the applicant has filed an application for maintenance after three years.

15. It is pertinent to note that in matrimonial proceedings, the wife is always under the hope that, one day the dispute

will be resolved and she will be able to join her matrimonial house in the company of her husband. Sometimes, such hopes are fulfilled and sometimes not, which depends upon the nature of the dispute. Merely because, the applicant has filed the application for maintenance after three years, is not sufficient to doubt her intention and draw an inference that, the said application was filed only to harass the non-applicant. It can be inferred that she was under the hope that, issue will be resolved and she is in a position to join the company of the non-applicant and that can be a reason for filing this application after three years.

16. It is well settled that, while considering the transfer application, the convenience of the wife is to be taken into consideration. The applicant who is aged about 40 years and has to travel along with her son to attend the proceedings at Sangamner which is 400 Kms, it means, she has to spend entire day for travel to attend the proceedings. In her absence, her son will be under the shelter of grand parents.

17. Here, in the present case, grand parents are suffering from various ailments and therefore, it would be difficult for them to maintain child in absence of the applicant. If the applicant travelled along with the son then definitely his school would be affected and in the result of which, his education would be affected because it is not that the proceedings will be concluded in one day.

18. Considering all these aspects, the convenience of the applicant is to be taken into consideration. It is observed by the Hon'ble Apex Court in the case of *N.C.V. Aishwarya v A.S. Saravana Karthik Sha*¹

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

19. The only objections raised by the non-applicant is that the proceedings is filed by her at a belated stage. As already observed that, this only ground is not sufficient to raise any doubt regarding her conduct. On behalf of the non-applicant, it is also submitted that he is ready to incur the expenses towards conveyance. This submission is to be taken into consideration in the light that though the applicant has filed the proceedings for monetary relief, she has not received any relief either for maintenance of the child or his education.

1 AIR 2022 SC 4318

20. Learned advocate for the non-applicant submitted that, the interim maintenance order is complied with. However, learned advocate for the applicant, Shri U.J. Deshpande submitted that, the non-applicant is not even attending the proceedings which is filed by the applicant. So, contention of the non-applicant, who has not paid the maintenance amount, cannot be taken into consideration as he is ready to pay conveyance amount and therefore, the applicant would be in a position to attend the proceedings.

21. Moreover only, the monetary expectations or the conveyance is not an issue. The distance at which the applicant has to attend the proceedings is also an issue and that convenience is also to be taken into consideration.

22. As noticed above, the applicant who is a lady having parents of old aged and six year old son, it is difficult for her to attend the proceedings at Sangamner which is 400 kms. Moreover, the proceedings filed by her is also pending at Family Court Akola. So, non-applicant can attend both the proceedings at one place and there would not be a conflict decision if the same are decided by one of the same Court. In view of this, the application deserves to be allowed.

23. Learned advocate for the non-applicant, at this stage requested that non-applicant is serving as a school teacher and he would not get frequent leaves to attend the proceedings. In some eventualities, he would not be able to attend the proceedings then in such circumstances, he be

permitted to attend the proceedings through Video Conference.

24. The said submission can be taken into consideration. In view of that Family Court Akola may consider the request of the non-applicant and may permit to attend the proceedings through Video Conferencing. In view of that , I proceed to pass the following order:-

- a] Misc. Civil Application is **allowed**.
- b] The matrimonial proceedings bearing Hindu Marriage Petition No. 346/2019 be transferred from Civil Judge, Senior Division, Sangamner to Family Court, Akola for trial.
- c] The Civil Judge Senior Division, Sangamner shall send the record and proceedings of the Hindu Marriage Petition No. 346/2019 to the Family Court Akola.
- d] The Family Court, Akola shall consider the request of non-applicant to attend the proceedings through Video Conferencing whenever the request is made.
- e] The parties to appear before the Family Court Akola on 14/03/2023.

Misc. Civil Application is **disposed of**.

JUDGE