

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

MISC. CIVIL APPLICATION (TR.) NO.868 OF 2022

Sau. Yogita w/o Aashish Deshmukh
Vs.
Shri Ashish s/o Arvind Deshmukh

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

Court's or Judge's orders

Mr. Abhijeet P Deshmukh, Advocate for applicant.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 06/02/2023

1. By preferring this application, applicant wife is seeking transfer of matrimonial proceedings bearing Hindu Marriage Petition No.61 of 2022 pending in the Court Civil Judge Senior Division, Yavatmal to the Court of Civil Judge Senior Division, Daryapur.

2. As per the contention of the applicant, her marriage with the non-applicant was solemnized on 04.05.2021. After marriage, she resumed cohabitation. However, she was not treated well by the non-applicant and his family members. Therefore, she constrained to leave matrimonial house. She further contended that when she was pregnant non-applicant never took her for medical treatment and not taken her proper care, and therefore she could not carry the baby and abortion was took place. The ground for transfer raised by her is that she is residing at Lakhanwadi and Lakhanwadi to Yavatmal distance is more than 200 Kms. Moreover,

there is no direct convenience either bus or train is available to reach Yavatmal from Lakhanwadi village. There is nobody in the parental family to escort her to attend the proceedings. Moreover, non-applicant has not made any provisions for her maintenance to bear the cost of litigation.

3. Notice of the said application is served on the non-applicant. After service of notice, he failed to appear. To afford him last opportunity, time was granted, but he has not appeared and not contested the application.

4. Heard learned Advocate Mr. Deshmukh for the applicant.

5. Perused the application.

6. The learned Advocate reiterated the contentions. He further invited my attention towards the statement made by the applicant, the grounds that no direct conveyance is available to reach Yavatmal from Lakhanwadi village. He further submitted that due to the abortion the physical and mental condition of the applicant is also affected, and therefore the matrimonial proceedings be transfer to Civil Judge Senior Division Daryapur from Civil Judge Senior Division, Yavatmal.

7. Perused the application and the submissions made by the learned Advocate, it is not in dispute that the distance between the Lakhanwadi to Yavatmal is more than 200 Kms. Moreover, no direct conveyance is available to the applicant to attend the proceeding. It is

also apparent that non-applicant has not made any provisions for her maintenance, and therefore she is unable to bear the cost of the litigation. He further place reliance on **N.C.V. Aishwarya Vs. A. S. Saravana Karthik Sha** in **Civil Appeal No. 4894 of 2022** decided on 18.07.2022 wherein the Hon'ble Apex Court 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 socio-economic paradigm in the Indian society, generally, it is the wife's convenience which must be looked at while considering transfer.”

8. As noticed above, the applicant is a young lady, suffering from mental and physical weakness as she undergone the abortion. Moreover, no conveyance is available to her to travel all alone. In view of that application deserves to be allowed.

9. Misc. Civil Application is allowed.

10. The Hindu Marriage Petition bearing No.61 of 2022 pending in the Court of Civil Judge Senior

(4)

68.mca.868.2022

Division, Yavatmal is transferred to Civil Judge Senior Division, Daryapur.

11. Parties to appear before the Civil Judge Senior Division, Daryapur on 04.03.2023.

(URMILA JOSHI-PHALKE, J.)

Sarkate