

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

MISC. CIVIL APPLICATION NO.113/2020
Sau.Ashvini w/o Samrat Khadatkar and anr

..VS..

Samrat Keshavrao Khadatkar

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

Court's or Judge's Order

.....
Shri D.N.Mudgale, Counsel for the Applicants.
Shri H.D.Futane, Counsel for the Non-applicant.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 16/02/2023

1. By this application, the applicant/wife seeks transfer of Hindu Marriage Petition No.5/2019, filed by the non-applicant/husband for dissolution of marriage, pending before learned Joint Civil Judge Senior Division at Gondia to learned Judge of the Family Court at Amravati.

2. As per contention of the applicant/wife, she is legally wedded wife of the non-applicant/husband and their marriage was solemnized on 21.4.2013. After the marriage, she resumed cohabitation. However, she was not treated well and, therefore, she was constrained to leave her matrimonial house. Out of their wedlock, she gave birth to a female child who is now 4 years old. After she took shelter of her parental house at Amravati, the non-applicant/husband has not made her available any monetary provision for her livelihood. The non-applicant/husband has filed the petition seeking divorce at Gondia. The distance between Amravati and Gondia is approximately 300 kilometers. It is very difficult for her to

travell along with her minor child to attend proceedings at Gondia. There is nobody to escort her to Gondia as well as there is nobody to look after her minor child in her absence. As the non-applicant/husband has not made her available any monetary provision for her herself and for her minor child, she is unable to bear expenses of litigation. The place Gondia is not convenient for her to attend the said proceeding and, therefore, she prays that proceeding filed by the non-applicant/husband at Gondia be transferred to Amravati.

3. It is further contention of the applicant/wife that two proceedings filed by her are pending before learned Judge of the Family Court at Amravati and the non-applicant/husband is already attending the said proceedings and, therefore, if proceeding at Gondia is transferred to learned Judge of the Family Court at Amravati, all proceedings can be decided together by one Court and there would not be any inconvenience for the non-applicant/husband if he attends the Family Court at Amravati. She, therefore prays that Hindu Marriage Petition No.5/2019, filed by the non-applicant/husband for dissolution of marriage, pending before learned Joint Civil Judge Senior Division at Gondia be transferred to learned Judge of the Family Court at Amravati.

4. Heard learned counsel Shri D.N.Mudgale for the applicant/wife and learned counsel Shri H.D.Futane for the non-

applicant/husband.

5. Learned counsel Shri D.N.Mudgale for applicant/wife reiterates contentions as pleaded in the application. He submits that it is highly difficult for the applicant/wife to travel 300 kilometers along with four-year-minor child. The non-applicant/husband is already attending proceedings at Amravati and, therefore, if petition filed by him at Gondia is transferred to Amravati, all proceedings can be decided by one Court and it would be convenient for the non-applicant/husband to attend all proceedings at Amravati.

6. Learned counsel Shri H.D.Futane for the non-applicant/husband submits that he has no objection if proceeding filed by the non-applicant/husband at Gondia is transferred to learned Judge of the Family Court at Amravati.

7. I have heard learned counsel for the applicant/wife and learned counsel for the non-applicant/husband and perused the application. The non-applicant/husband filed petition at Gondia seeking divorce. It is not in dispute that two proceedings for grant of maintenance and under Domestic Violence Act are already pending before learned Judge of the Family Court at Amravati and the non-applicant/husband is attending the said proceedings at Amravati.

8. It is a well settled position of law that while considering

applications for transfer, convenience of wife is to be looked into. Recently, the issue of inconvenience has been dealt with by the Honourable Apex Court in the case of NCV Aishwarya vs. A.S.Saravana Karthik Sha in Civil Application No(S). 4894/2022 decided on 18.7.2022 wherein the Honourable Apex observed that 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. When two or more proceedings are pending in different Courts between the same parties which raise common question of fact and law, and when the decisions in the cases are interdependent, it is desirable that they should be tried together by the same Judge so as to avoid multiplicity in trial of the same issues and conflict of decisions.

9. In view of the decision of the Honourable Apex Court in

the case cited *supra* and considering convenience of wife, the application deserves to be allowed. Hence, I pass following order:

ORDER

(1) The Misc. Civil Application is **allowed**.

(2) Hindu Marriage Petition No.5/2019, filed by the non-applicant/husband for dissolution of marriage, pending before learned Joint Civil Judge Senior Division at Gondia be transferred to learned Judge of the Family Court at Amravati.

(3) The parties shall appear before learned Judge of the Family Court at Amravati on 14.3.2023.

With this, the Misc.Civil Application is disposed of.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!

BHUSHAN
RANA
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