

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

MISC. CIVIL APPLICATION (TR) NO. 814/2022

Sau. Damini @ Jaya w/o Umesh Karale V/s Umesh s/o Gajananrao Karale

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

Court's or Judge's Order

Mr A.D. Girdekar, counsel for the applicant.

Ms Ayushi Mishra, counsel h/f Mr S.D. Chande, counsel for the
non-applicant.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 13/03/2023.

1. Heard.
2. Present application is filed by the applicant/wife for seeking transfer of matrimonial proceedings bearing Petition No. 114/2022 pending before the Joint Civil Judge, Senior Division, Darwha to the learned Civil Judge, Senior Division, Amravati.
3. As per the contention of the applicant, she is legally wedded wife of the non-applicant/husband. Their marriage was solemnized on 28/05/2021 at Walgaon, Amravati. After marriage, she resumed cohabitation at the house of non-applicant. However, she was not treated well, and therefore, she constrained to leave the matrimonial house and staying at the mercy of her parents.
4. It is the further contention of the applicant that after she was deserted by the non-applicant, no provision was made by the non-applicant for her maintenance or for her

livelihood. Therefore, she is unable to incur the cost of litigation. Moreover, there is nobody to escort her to attend the proceedings at Darwha, which is more than 100 Kms from the Amravati.

5. The said application is strongly opposed by the non-applicant on the ground that the application is filed by the applicant on the false and baseless ground. In fact, she is the earning member and getting Rs.500/- per session by taking Yoga Classes. She was appointed as Yoga Trainer by the Health Department of Taluka Arogya Adhikari Amravati, Taluka Amravati, Zilla Amravati. Thus, she is not dependent on anybody to incur the expenses for litigation. As the applicant is serving as a Yoga Trainer, she is very well used to travel at various places, and therefore, the said ground is also not available to the applicant.

6. It is submitted that she has suppressed the material things, while filing the transfer application, and therefore, she is not entitled for any relief from this Court.

7. Heard learned counsel Mr Girdekar, for the applicant. He reiterated the said contentions and in addition to that he submitted that the amount of Rs.500/- which she is receiving as Yoga Trainer is per session and only one session is to be held in one week. So, she is getting very meager amount from the said work. If, she incur the expenses towards travelling and cost of litigation, then she has to suffer from

starvation and by considering the same, the matter be transferred to Amravati.

8. He further submitted that, she had already filed an applications under the provisions of the Domestic Violence Act as well as under the provisions of Code of Criminal Procedure for maintenance. So, if all the proceedings are decided at Amravati, no prejudice will be caused to the non-applicant as the non-applicant is already attending the same proceedings at Amravati. In support his contention, he placed reliance on para 9 of **N.C.V. Aishwarya .Vs.. A. S. Saravana Karthik Sha**¹. The said para is quoted as under :

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"

9. On the other hand, Ms Ayushi Mishra holding for Mr S. D. Chande, learned Counsel appearing for non-applicant submitted that the applicant has filed application on

1 AIR 2022 SC 4318

false and baseless grounds. The applicant's material fact that she is presently employed by the Health Department of Taluka Arogya Adhikari, Taluka Amravati, Zilla Amravati and earning handsome salary. Therefore, she is able to incur the expenses towards travelling and litigation. As she is working lady, she can travel and attend the proceedings at Darwaha. Thus, no ground is made out to transfer the Matrimonial Proceedings.

10. In support of her contention, she placed reliance in the case of *S. P. Chengalvaraya Naidu (dead) by L.Rs ..Vs.. Jagannath (dead) by L.Rs. and others*², wherein it is held that "the courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands".

11. She further placed reliance in the case of *Gayatri Mohapatra ..Vs.. Ashit Kumar Panda*³, wherein it is held that "transfer of petition of matrimonial dispute pending before family Court at place 'M' sought to be transferred by wife to family Court at place 'C' on the ground that petitioner being lady and difficult to travel to attend hearing of case from time to time. From counter allegations it is clear that petitioner travels from one place to another in connection with business work. On the ground that, she will not be able to travel to 'M' is not valid ground. Transfer petition dismissed."

2 1994 AIR SCW 243

3 AIROnline 2000 SC 17

12. She further relied in the case of **Preeti Sharma ..Vs.. Manjit Sharma**⁴, wherein it is held that “no substantial ground for transfer has been made out. If the petitioner wishes that all cases be tried at one place, she may apply for the same”. She further relied in the case of **Rajnish ..Vs.. Neha**⁵, wherein it is held that point of maintenance claim for overlapping jurisdiction under different enactments is mandatory for applicant to disclose previous maintenance proceeding, and orders passed therein in subsequent proceeding.

13. Heard both the sides. Perused the application and record.

14. The application is filed on the ground that applicant is staying at Amravati and matrimonial proceeding is pending before the Joint Civil Judge, Senior Division, Darwha. The ground raised by the applicant is, that she had already filed the applications under the provisions of the Protection from the Domestic Violence Act for monetary relief and under Section 125 of the Code of Criminal Procedure for grant of maintenance. Further the ground raised is, that she has no source of income, and therefore, she is unable to incur the expenses.

15. The contention of the applicant is, that she is working as Yoga Trainer/Instructor and only amount of Rs. 500/- per session once in a week is paid to her by the Taluka Health

4 AIROnline 2005 SC 866

5 AIROnline 2020 Pat 998

Officer. The non-applicant has produced on record Annexure-1 which also sufficiently shows that she is entitled to receive the amount of Rs.500/- per session per week. Thus, only meager amount she is receiving towards the remuneration as Yoga Trainer. The amount of Rs.500/- per week is very meager amount and definitely the said amount will not be sufficient for her to incur the expenses of the litigation.

16. The another ground raised by the applicant is that there is nobody to escort her to attend the Court proceedings at Darwha, which is 110 Kms. from Amravati. As she is residing at the mercy of her parents and already two proceedings at Amravati, are pending in the Court of the Civil Judge, Junior Division, Amravati, the non-applicant is already attending the said proceedings.

17. The decision, on which the non-applicant placed reliance, in *S.P. Chengalvaraya Naidu (dead) by L.Rs vs Jagannath (dead) by L.Rs. and others (supra)*, wherein the facts are not identical with the present case, and hence, not helpful to the non-applicant. Another judgment of which the non-applicant is relied upon *Rajnish V/s Neha (supra)* is also not relevant, while considering the transfer application. So far as the decision in *Gayatri Mohapatra vs Ashit Kumar Panda (supra)* is concerned, wherein the facts on record show that the applicant was travelling for her business, and therefore, Court has held that she is able to travel from one

place to another. Here in the present case, no such material on record to show that applicant is travelling for her work from one place to another and she is able to travel alone to attend the proceedings.

18. As observed by the Hon'ble Apex Court, when two or more proceedings are pending in different Courts between the same parties which raised common questions of fact and law, and when the decision in the case is interdependent, it is desirable that they should be tried together, so also avoid the multiplicity in the trial of the same issues and conflict of the decisions.

19. As noticed above, the applicant is a young lady, aged about 21 years staying at the mercy of her parents. As it is well settled that while considering the transfer applications, the convenience of the applicant wife is to be looked into. Under the above circumstances, application deserves to be allowed. Hence, I proceed to pass following order.

ORDER

- a) Misc. Civil Application is **allowed**.
- b) The matrimonial proceedings bearing Petition No.114/2022 pending in the Court of Joint Civil Judge, Senior Division, Darwha be transferred to the Court of learned Civil Judge, Senior Division, Amravati.

c) The record and proceedings of Hindu Marriage Petition No. 114/2022 be sent to the learned Civil Judge, Senior Division, Amravati.

d) The parties to appear before the learned Civil Judge, Senior Division, Amravati on 03/04/2023.

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

JUDGE