

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

MISC. CIVIL APPLICATION (Tr) NO. 813/2022

Shital Ananta Nile V/s Ananta Rambhau Nile

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

Court's or Judge's Order

Mr V.B. Bhise, Advocate for applicant.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 17/02/2023.

1. By preferring this civil application, applicant / wife is seeking transfer of matrimonial proceedings bearing HMP No. 69/2022 which is pending before the learned Civil Judge, Senior Division, Malkapur to Civil Judge Senior Division, Daryapur.
2. As per the contention of the applicant, she is serving as a Talathi. She is legally wedded wife of the non-applicant and their marriage was solemnized on 31/05/2015. After marriage, she resumed cohabitation at the house of non-applicant, but she was not treated well by the non-applicant. She has six years of daughter from the said wedlock.
3. It is further contention of the applicant that, due to the ill-treatment at the hands of the non-applicant, she constrained to leave matrimonial house and staying at Daryapur at her parents house. The non-applicant has filed the petition for Restitution of Conjugal Rights in the Court

of learned Civil Judge Senior Division, Malkapur. As she is serving as a Talathi, she has very hectic schedule therefore, she is unable to attend the proceedings at Malkapur which is 150 kms away from Daryapur and therefore, requested to transfer of the proceedings from Malkapur to Daryapur.

4. Notice of the said application is served on the non-applicant but non-applicant failed to appear and chosen not to contest the application.

5. Heard Shri V.B. Bhise, learned Counsel for the applicant. He reiterated the same contentions raised in the application, and submitted that in view of the reasons mentioned in the application for the convenience of the wife, matrimonial proceedings be transferred from the Civil Judge, Senior Division, Malkapur to the Civil Judge Senior Division Daryapur.

6. In support of his submission, learned advocate for the applicant has placed reliance in the case of *Sheetal Mahendra Devrukhkar Vs Mahendra Kashiram Devrukhkar*¹. Wherein, the application of the wife, who was the bus-conductor for transfer of the proceedings from Mumbai to Nashik was considered.

7. He submitted that in the present case also, the applicant is seeking transfer from Malkapur to Daryapur and the case of the applicant is covered by this judgment.

1 2016(3) Mh.L.J.

8. Perused the application and the judgment on which, the applicant has placed reliance. The matrimonial proceedings are filed by the husband at Malkapur in the Court of the Civil Judge, Senior Division Malkapur. The distance between Malkapur and Daryapur is 150 Km. There is no dispute that the applicant is residing along with her parents having small daughter of six years.

9. The judgment on which, the applicant has relied upon and the issue raised in the present application is similar in nature.

10. This Court, has referred the judgment of the Hon'ble Supreme Court of India in the case of *T. Gayatri Devi vs Dr. Tallepaneni Sreekanath*². Wherein the High Court had refused to transfer it to the place of wife, where the wife is working, on the ground that the applicant is not an indigent lady and she is capable of contesting the suit by undertaking the journey. It is further held by the Hon'ble Supreme Court that the husband who has filed divorce proceedings against the wife cannot expect that the proceedings to be tried at the place of his choice.

11. Here, in the present case also, the non-applicant has filed petition for Restitution of Conjugal Right at Malkapur, wherein he is residing. It is well settled that, while considering the transfer application of matrimonial proceedings convenience of wife is to be looked into. By

2 2013 MhLJ Online (SC) 9

noticing the facts and the settled law, the application deserves to be allowed. Hence, I pass the following order.

- a) The Misc. Civil Application is **allowed**.
- b) The matrimonial proceedings bearing Hindu Marriage Petition No. 69/2022 be transferred to Civil Judge, Senior Division, Daryapur from Civil Judge, Senior Division, Malkapur.
- c) The Civil Judge Senior Division, Malkapur shall send the record and proceedings to the Civil Judge Senior Division, Daryapur.
- d) Parties to remain present before the Civil Judge Senior Division, Daryapur on 13/03/2023.

JUDGE