

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

MISC. CIVIL APPLICATION NO. 870/2022

Rashmi W/O Milind Pawar Vs Milind S/O Sadashiv Pawar

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

Court's or Judge's Order

Mr Shantanu Ghatge, Advocate for the applicant.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 28/02/2023.

1. This application is filed by the applicant/wife for transfer of the matrimonial proceedings bearing Petition No.A-30/2011 from the Family Court, Amravati to Family Court, Nagpur.
2. As per the contention of the applicant, her marriage was performed with the non-applicant on 06/07/2006. The applicants has already informed the parents of the non-applicant that the applicant has weak eyesight and she is suffering from blindness. Similarly, the non-applicant is also suffering from polio and paralyzed with right hand. Having known to each other's ailments, the marriage was solemnized on 06/07/2006.
3. However, after marriage, the applicant was not treated well by the non-applicant and his parents. Therefore, she constrained to leave the matrimonial house. The applicant was residing at Nagpur at the mercy of her parents. Recently her father also died. After she was deserted by the non-applicant,

she had filed the proceeding bearing HMP No. A-553/2012 for restitution of conjugal rights. The said petition came to be decreed and order of restitution came to be passed. Thereafter, the applicant has also filed the proceeding under Section 125 of the Code of Civil Procedure. The said proceedings was also allowed and maintenance at the @ Rs.3000/- has been awarded. However, the non-applicant has not complied with the order passed by the Court in application bearing No. E-313/2011. The non-applicant has filed the petition for divorce bearing No. A-30/2011.

4. It is further contented that deliberately the non-applicant has given incorrect address of the applicant and notice was issued to her. Notice was shown to be served on the present applicant about the divorce petition and ex-parte decree was passed by the Court, as the applicant was absent before the Court. Therefore, she preferred an appeal bearing No. 87/2015 which was allowed by this Court on 26/08/2022 and the proceedings was remitted back to the Family Court for fresh hearing and disposal of the matter.

5. Now, the applicant has lost her father and also she has no source of income. Due to her blindness, she is unable to travel from Nagpur to Amravati without support of anybody as her father is also not alive. There is nobody to escort her to attend the proceedings.

6. Moreover, the non-applicant is also transferred from Amravati to Gondia. In the aforesaid facts and circumstances,

it will be convenient for both the parties to attend the proceedings at Nagpur and hence she prayed for transfer of the proceedings from Family Court, Amravati to Family Court, Nagpur.

7. Notice of the said application is duly served on the non-applicant. However, non-applicant failed to appear after giving sufficient opportunity, he chosen not to contest the application.

8. Heard learned advocate Shri Ghate for the applicant. He endorsed the same contention as raised in the application. In addition to that he submitted as the applicant has lost her father also, it is quite difficult for her to attend the proceeding considering her ailment to travel from Nagpur to Amravati which is more than 150 km. Now, the non-applicant who is also transferred from Amravati to Gondia. Accordingly, amendment is carried out by the applicant in the application. Considering all these reasons, the matrimonial proceedings pending before the Family Court, Amravati be transferred to Family Court, Nagpur.

9. Perused the application. The statement is made by the applicant that not only she but the non-applicant is also suffering from ailment and by accepting each others ailments, the marriage was performed. However, both could not cope up with each other. Therefore, the applicant constrained to leave the matrimonial house. The ground raised in the application shows that due to the ailment that she has weak

eyesight, she is unable to travel. Moreover, the non-applicant has not complied with the order of maintenance and therefore, she is unable to bear the cost of litigation. Admittedly, the distance between the two cities is more than 150 km. Now it is well settled that while considering the transfer application in the matrimonial proceedings, the convenience of the wife is looked into. Recently the Hon'ble Supreme Court of India has observed in the case of N.C.V. Aishwarya v. A.S. Sarvana Karthik Sha¹ dealt with the said issue and in para-9 observed as follows:-

“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.”

10. As noticed above, the applicant is having weak eyesight and it is inconvenient for her to attend the proceedings. Moreover, considering that now the non-applicant is also not residing at Amravati and no prejudice

1 AIR 2022 SC 4318

would cause to him if the proceedings is transferred from Amravati to Nagpur. Resultantly, the applicant succeeds. In view of that I proceed to pass the following order.

- a) The Misc. Civil Application (Tr) No. 870/2022 is allowed.
- b) The matrimonial proceedings bearing Petition No. A-30/2011 pending before the Family Court, Amravati is transferred to Family Court, Nagpur.
- c) The Presiding Officer of Family Court, Amravati shall send the record and proceedings of petition No. A-30/2011 to the Family Court Nagpur.
- d) The parties to appear before the Family Court, Nagpur on 16/03/2023.
- e) The Family Court, Nagpur shall expedite the proceedings as early as possible because the litigation is pending since 2011.

JUDGE