



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

MISC. CIVIL APPLICATION [MCA] No.876 OF 2023

SAU. RUPAM W/O AKSHAY SHRIWASTV
VRS.
AKSHAY S/O RAJENDRA SHRIWASTV

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

Court's or Judge's Order

Shri Raju Kadu, Advocate for applicant.

CORAM: M. W. CHANDWANI, J.
DATE : 01/02/2024.

Heard the learned Counsel appearing for the applicant-wife.
None appears for non-applicant - husband, though he is duly served
being a contesting party.

02] By invoking the jurisdiction of this Court under Section 24 of
the Code of Civil Procedure, the applicant seeks transfer of petition
bearing HMP No.15/2023 pending on the file of the learned Civil Judge,
Senior Division, Nashik to the learned Family Court, Nagpur / Competent
Court.

03] The applicant is wife of non-applicant. Out of said wedlock,
they are having a son, aged about 2 years. Due to cruelty at the hands of
non-applicant, the applicant along with her son are residing with her
parents house at Orange Nagar, Near Maruti Temple, Kharbi Square,
Nagpur. The applicant - wife has filed criminal application bearing
P.W.D.V.A. No. 2754/2023 under Sections 12, 18, 19, 20, 22 and 23 of
the Protection of Women from Domestic Violence Act, 2005 before the
learned Judicial Magistrate First Class, Nagpur for grant of various reliefs
i.e. for handing over possession of gold and silver ornaments and
maintenance, etc. against non-applicant, which is still pending. Non-
applicant also filed Petition under Section 9 of the Hindu Marriage Act,

1955 bearing HMP No.15/2023 for Restitution of Conjugal Rights before the learned Civil Judge Senior Division, Nashik. The learned Civil Judge Senior Division, Nashik has issued a notice to the applicant in the said petition.

04] It is contended on behalf of the applicant that the applicant has no independent source of income and totally dependent upon the non-applicant - husband. The applicant has further contended that the parents of the applicant also do not have any sufficient income to maintain her and her minor son. Due to poor financial position, the parents of the applicant are not in a position to bear to and fro expenses of her travelling for attending the proceedings filed by non-applicant at Nashik. Hence, she seeks transfer of petition HMP No.15/2023 pending on the file of the learned Civil Judge, Senior Division, Nashik to the learned Family Court, Nagpur / Competent Court.

05] In spite of service of notice upon the non-applicant - husband, the non-applicant chooses to remain absent and not to contest the application.

06] The applicant is having a minor son. They are totally dependent on the parents of the applicant. The applicant is residing at Nagpur. Travelling to Nashik, which is nearabout 600 kms away from Nagpur, will be difficult for the applicant by leaving her minor child. After attending the proceedings at Nashik, the applicant, a lady, will have to return to Nagpur at late night.

07] In these peculiar circumstances and in view of the ratio laid down by this Court in the case of **Sangamitra w/o Ramakant Royalwar vs. Ramakant s/o Gangaram Royalwar – 2008 (6) ALL.MR.1** and also in view of the recent verdict of the Hon'ble Supreme Court in the case of **N.C.V. Aishwarya vs. A.S. Saravana Karthik Sha – 2022 LiveLaw (SC) 627** wherein it has been held that the convenience of the wife must be looked

at, a case is made out for transferring the proceedings filed by non-applicant from Nashik to Nagpur. Hence, the following order:

- i] The application is allowed.
- ii] Petition bearing HMP No.15/2023 filed by non-applicant pending on the file of the learned Civil Judge, Senior Division, Nashik is directed to be transferred to the Competent Court of Family Court, Nagpur, Dist. Nagpur.
- iii] Both the parties are directed to appear before the Competent Court at Family Court, Nagpur on 20/02/2024.

The application is disposed of accordingly.

[M. W. CHANDWANI, J.]

Choulwar