



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

MISC. CIVIL APPLICATION NO.1168 OF 2023

Mrs. Mansi W/o Akshay Talreja,
Aged about 31 years, Occ – Nil,
R/o C/o Santosh Nanwani,
“NANWANI” 4-B, Navjiwan Colony,
Near Sudarshan Building, Shankar Nagar,
Amravati MH-444606

...APPLICANT

...V E R S U S...

Mr. Akshay S/o Ashok Talreja
Aged about 32 years, Occ: Business,
R/o “Shivoham”, 66/13, Sector 28,
Near Tilak College, Vashi, Mh-400703.

...NON-APPLICANT

Shri G.I. Dipwani, Advocate for Applicant.

Shri Akshay Shah, Advocate i/b Dr. S.B. Singh, Advocate for Non-Applicant.

CORAM:- M.W. CHANDWANI, J.

DATED :- 08.03.2024.

ORAL JUDGMENT:

. Heard. Admit.

2. By the present application, the applicant-wife is seeking transfer of Hindu Marriage Petition No.A-539 of 2023 pending on the file of Family Court, Belapur to the Family Court, Amravati.

3. It is not necessary to go into the allegations and counter allegations made in the proceedings pending before the Family Court, Belapur or Family Court, Amravati or Judicial Magistrate First Class, Amravati, suffice to say that the applicant is residing separately alongwith her two year old daughter at her

parental house at Amravati. She has filed proceedings under the provisions of Protection of Women from Domestic Violence Act, 2005 pending on the file of learned Judicial Magistrate First Class, Amravati as well as a marriage petition pending before the Family Court, Amravati. The non-applicant-husband has also filed marriage petition under Section 9 of the Hindu Marriage Act, which was earlier filed before the Civil Judge, Senior Division, Belapur, however after establishment of Family Court the same has been transferred to the Family Court, Belapur.

4. Shri Dipwani, learned counsel appearing on behalf of applicant would submit that the applicant is taking care of her minor daughter, who is aged about 2 years. The applicant is not having any source of income and till the date no interim order has been passed. The distance between Amravati and Belapur is about 650 kms. It will be difficult for the applicant physically as well as monetarily to attend the case at Family Court, Belapur. It is also contended that due to domestic violence at the hands of non-applicant at Belapur if she again travels to Belapur there may be possibility of untoward incident. Therefore, she seeks transfer of Hindu Marriage Petition filed by the non-applicant from Family Court, Belapur to Family Court, Amravati.

5. Shri Shah, learned counsel appearing on behalf of the non-applicant vehemently objected to the application on the ground that the applicant was very happy in the company of the non-applicant and she enjoyed the period, during which she stayed with the non-applicant. According to him, there is no domestic violence inflicted upon the applicant. To buttress his submission, he filed various photographs of the applicant and non-applicant. Whether there was domestic violence at the hands of non-applicant is subjudice before the Court at Amravati as well as at Belapur. Here the applicant has prayed for transfer of the proceedings.

Learned counsel non-applicant would submit that though order of maintenance has not been granted, but the non-applicant is ready to provide to and fro expenses to the applicant alongwith her companion. He further submits that the applicant used to visit Mumbai for medical and shopping purposes therefore it cannot be said that it will be difficult for her to travel to Belapur. According to him, just because of inconvenience of the applicant the matter cannot be transferred. To buttress his submission, he seeks to rely on the decision of *Anindita Das Vs. Arijit Das* ¹,

¹ (2006) 9 SCC 197

wherein the Supreme Court has held that leniency granted by the Court regarding the transfer of petitions filed by the women is being misused by them. The decision of the Supreme Court in the case of *Dr. Subramaniam Swamy Vs. Ramkrishna Hegde*¹, is relied by the non-applicant, wherein it is held that convenience of parties is not a ground to transfer the petition. The denial of justice as result of non-transfer of the case must be shown. Another decision of the Supreme Court in the case of *Delma Lubna Coelho Vs. Edmond Clint Fenandes*² has been relied, wherein transfer of petition has been refused on the ground that there is no child born out of wedlock to be taken care of.

6. Indisputably, the distance between Amravati and Belapur is about 650 kms. To attend the matter the applicant has to proceed to Belapur one day in advance and after attending the proceedings she will have to travel for almost a day. She has a 2 year old daughter. Carrying a child and residing out of her home for three days will be difficult for the applicant. On the other hand, the non-applicant has already been summoned in two proceedings pending at Amravati. Even otherwise he has to attend those proceedings at Amravati.

1 (1990) 1 SCC 4

2 2023 SCC OnLine SC 440

7. Considering this fact no inconvenience will be caused to the non-applicant if the matter is transferred. In recent decision in the case of *NCV Aishwarya Vs. A.S. Saravana Karthik Sha* ¹, the Supreme Court held that in the matrimonial proceedings the convenience of the wife has to be looked into. Further, in the case of *Rajani Kishor Pardeshi Vs. Kishor Babulal Pardeshi* ², the Supreme Court has held that between the convenience of husband and wife, it is the convenience of the wife that has to be preferred.

8. Further it will be just and proper that petition under section 9 and 13 of the Hindu Marriage Act shall be tried by the same Court to avoid multiplicity of proceedings and conflicts of decision.

9. So far as the case relied on by the non-applicant *Dr. Subramaniya Swami* (supra), the matter from which transfer was sought was not matrimonial proceedings and in that contingency, the Supreme Court has held that something has to be shown that denial of transfer would cause injustice to the party. Further, in case of *Delma Lubna Coelho* (supra) there was no child born out of wedlock to be taken care of, therefore the application was rejected.

¹ 2022 LiveLaw (SC) 627

² (2005) 12 SCC 237

10. In *Anindita Das* (supra), the Supreme Court though has held that the leniency of the Court is being misused by the wife, but at the same time the Supreme Court has held that a case has to be considered on merits. Considering the facts of the present case mentioned above, a case is made out for transfer of the petition from the Family Court, Belapur to the Family Court, Amravati. Even, the non-applicant may attend the proceedings before the Family Court, Amravati through video conferencing, if the said facility is available and upon application made in this behalf to the said Court on the date where his physical presence is not required.

11. In view of above, the application stands allowed.

12. Hindu Marriage Petition No.A-539 of 2023 pending on the file of Family Court, Belapur is hereby transferred to the Family Court, Amravati.

The application is disposed of in above terms.

JUDGE

Wagh