



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

MISC. CIVIL APPLICATION (TR.) NO. 344 OF 2024

Pushpa W/o. Prakash Gayakwad

Vs.

Prakash S/o. Mahadeo Gayakwad

Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

Mr. S.S. Bhalerao, Advocate for the Applicant.

Ms. Rudra Muladkar, Advocate h/f. Mr. O.R. Deshpande, Advocate for the
 Non-applicant.

CORAM : G. A. SANAP, J.

DATED : 16th AUGUST, 2024.

. This is an application for transfer of Marriage Petition No.136/2023, filed by the non-applicant against the applicant before the 4th Joint Civil Judge (Senior Division), Kelapur, Dist. Yavatmal, seeking a decree of divorce, to the Family Court at Nagpur.

2. It is stated that the applicant is residing at Nagpur with her mother. She has no source of income. The non-applicant has not made any provision for her maintenance. The distance between Nagpur and Kelapur is 125 kms. and the travel time by bus, which is the only mode of conveyance available, is not less than five hours. It is stated that the applicant has filed a proceeding under Section 125 of the Code of Criminal Procedure, 1973 (for short, "Cr.PC") against the non-applicant for maintenance. The said proceeding was dismissed and the application for restoration made by the applicant is pending. It is stated that, in any case, the non-

applicant would be required to attend the Family Court in the said proceeding. It is stated that the facts in both the cases are similar and therefore the adjudication of the same by one Court would avoid the repetition of the evidence and conflicting findings.

3. The non-applicant has filed the reply. It is stated that his mother is old and suffering from heart ailment. His daughters, one is 14 years old and another is 18 years old, are residing with him. He is required to attend to the needs of his daughters. He is required to attend his duty. It is contended that if the transfer application is allowed, then the non-applicant would face great inconvenience.

4. The non-applicant is doing service. The daughters are residing with him. His mother is old. It is stated that his mother is suffering from heart ailment. It needs to be stated that one daughter is 14 years old and another daughter is 18 years old. It is, therefore, apparent that the daughters are capable of taking care of themselves. The non-applicant may not be required to look after their day-to-day requirements except to provide for their maintenance and needs.

5. The applicant is residing at Nagpur with her mother. She is a housewife. It is stated that she has no source of income and therefore she has applied for maintenance before the Family Court. The distance between Kelapur and Nagpur is 125 kms. The only mode of conveyance is by bus. Kelapur is at a distance of 71 kms. from Yavatmal. It is to be noted that the journey by bus to Kelapur would be a treacherous journey. The applicant is

not doing any work to earn her livelihood. The non-applicant has sufficient means. The non-applicant, in any case, would be required to attend the Family Court in the 125 Cr.PC proceeding filed by the non-applicant. In my view, instead of making the parties to travel to two Courts, it would be advisable to bring two proceedings under one roof. In the facts and circumstances, it would be just and proper to grant the prayer made by the applicant. The comparative inconvenience caused to the wife would be greater in case her application for transfer is rejected. Hence, the following order:

ORDER

- i] The Application is **allowed**.
- ii] Marriage Petition No.136/2023, filed by the non-applicant against the applicant before 4th Joint Civil Judge (Senior Division), Kelapur, Dist. Yavatmal seeking a decree of divorce, be transferred to the Family Court at Nagpur for decision in accordance with law.
- iii] The learned Principal Judge of the Family Court at Nagpur, on transfer, shall ensure that Marriage Petition No.136/2023 be assigned to the Court, where the 125 Cr.PC proceeding is pending.
- iv] The Application stands disposed of in the aforesaid terms. No order as to costs.

(G. A. SANAP, J.)

Vijay