



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

MISC. CIVIL APPLICATION (TR.) NO. 402 OF 2024

Mrs. Swati W/o. Kamlesh Suryavanshi @ Swati D/o. Nilkanthrao Pohare

Vs.

Mr. Kamlesh S/o. Chandrakant Suryavanshi

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

Court's or Judge's orders

Ms. J.K. Lavate, Advocate for the Applicant.

Mr. R.N. Badhe, Advocate for the Non-applicant.

CORAM : G. A. SANAP, J.

DATED : 16th AUGUST, 2024.

1. This is an application for transfer of Petition No. B-31/2023, filed by the non-applicant against the applicant in the Court of Principal Judge, Family Court, Solapur, to the Court of Civil Judge (Senior Division), Akola.

2. It is stated that the applicant is serving as a Sales Tax Inspector and posted at Akola. She has a four-year-old daughter. Her widowed mother, who is also 70 years old, is looking after her daughter in her absence. The divorce petition filed by the non-applicant was initially transferred from Solapur to the Court of Civil Judge (Senior Division), Akola. The non-applicant has withdrawn this Hindu marriage petition. However, the counter claim filed by the applicant in the said Hindu marriage petition is still pending. The non-applicant is required to attend the said counter claim.

3. The applicant has filed a proceeding under Section 12 of the Protection of Women from Domestic Violence Act,

2005 (for short, “D.V. Act”) against the non-applicant. The said proceeding is also pending before the Judicial Magistrate First Class, Akola. It is stated that the non-applicant has filed an appeal against the order of Judicial Magistrate awarding the interim maintenance to the applicant and to her daughter. It is stated that, as on date, three proceedings are pending in the Courts at Akola between the parties. The proceeding initiated before the Family Court at Solapur is for seeking a decree of nullity of her marriage.

4. It is stated that the distance between Akola and Solapur is 500 kms. Her mother, who is 70 years old, is bedridden. The applicant has to attend her duty. She would be required to take a long leave to attend the proceeding at Solapur. It is stated that the divorce petition filed by the non-applicant/husband earlier on the same ground was transferred from Solapur to Akola. It is, therefore, submitted that, considering the precarious position of the applicant, it is necessary to grant her prayer for transfer.

5. The non-applicant has filed the reply and opposed the application. There is hardly any dispute about the pending proceedings between the parties. However, it is contended that, in the proceeding filed by the non-applicant at Solapur, there are more than one witnesses who are senior citizen. It is stated that the transfer of the petition would entail a great inconvenience to those witnesses. It is further contended that the non-applicant has undergone angioplasty in 2018. It is contended that, therefore, the inconvenience caused to the non-applicant to attend the Court at Akola would be greater,

compared to the inconvenience caused to the applicant, if any.

6. It is to be noted that three proceedings between the parties are pending in the Courts at Akola. The applicant is posted as a Sales Tax Inspector at Akola. A four-year-old daughter is with her. It is stated that her widowed mother, who is 70 years old and bedridden, is also required to be looked after by the applicant. She has admitted her daughter in the school at Akola. Undisputedly, the distance between Solapur to Akola is 500 kms. The non-applicant is the government contractor. Since the applicant is in service, for attending the Court at Solapur, she would be required to take a long leave. She would be required to either carry her four-year-old daughter with her or leave the daughter in the custody of her mother, who herself is bedridden.

7. In my view, in the facts and circumstances, the inconvenience likely to be caused to the applicant would be greater, compared to the inconvenience caused to the non-applicant. In my view, therefore, the facts stated in the application by itself, are sufficient to accept the contention of the applicant.

8. Learned advocate for the non-applicant submitted that, if the Court is inclined to grant the application for transfer, then in that event, the learned Judge, before whom the proceeding would be transferred, be directed to expedite the hearing of the same. Learned advocate submits that, on transfer of the Hindu marriage petition from the Family Court at Solapur to Akola, the same be assigned to the same Judge and

both the proceedings be heard together and decided by the same Judge. In my view, this request is reasonable. Granting such a request would serve the interest of both the parties. As such, this submission deserves acceptance. Hence, the following order:

ORDER

- i] The Application is **allowed**.
- ii] Petition No. B-31/2023, filed by the non-applicant against the applicant in the Court of Principal Judge, Family Court, Solapur, be transferred to the Court of Civil Judge (Senior Division), Akola, for decision in accordance with law.
- iii] On transfer, the petition be assigned to the Court, where the counterclaim for divorce filed by the wife is pending.
- iv] Both the proceedings be tagged together, heard and decided together.
- v] It is made clear that, as and when a request is made by the non-applicant for his appearance as well as for the appearance of the witnesses *via* video conferencing, the same shall be considered.
- vi] The Application stands disposed of in the aforesaid terms. No order as to costs.

(G. A. SANAP, J.)

Vijay