



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

CRIMINAL APPLICATION [APPLN] NO. 19 OF 2024

NACHIKET S/o RAJENDRA DESHPANDE AND OTHERS

VERSUS

*SMT. PRADNYA W/o NACHIKET DESHPANDE @ MS. PRADNYA D/o PURUSHOTTAM
BHULGAONKAR*

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

Court's or Judge's Order

Mr. R. M. Pande, Advocate for the applicants.
Ms. D. J. Kukreja, Advocate for the non-applicant.

CORAM : G. A. SANAP, J.
DATE : JUNE 24, 2024.

1. This application has been made by the applicants seeking transfer of Criminal Misc. Application No. 2790/2023, filed under the provisions of the Protection of Women from Domestic Violence Act, 2005, (hereinafter referred to as "the D.V. Act" for short), pending on the file of learned 18th Joint Civil Judge, Senior Division, Nagpur to Family Court no.2, Nagpur, where the petition for divorce, filed by the non-applicant/wife, is pending.

2. It is stated that the averments made in the pleadings in both the cases are more or less similar. The applications for interim maintenance made by the non-applicant are pending before the respective Courts. It is stated that the applicants are residents of village Kandli, Tah. Achalpur, Dist. Amravati. The non-applicant/wife is residing at Nagpur. According to the applicants, in order to avoid

repetition of the evidence on same set of facts before two Courts and thereby unnecessary hardship to the parties, it is necessary to transfer the D.V. Act proceedings pending before the 18th Jt.CJSD to the Family Court. The applicants state that such a transfer can ensure convenience to both the parties and adjudication of the dispute on similar set of facts by one Court can avoid conflicting findings.

3. This application has been opposed by the non-applicant. It is contended that no case has been made out for transfer of the D.V. Act proceedings to the Family Court. A grievance has been made by the non-applicant/wife that she has been subjected to domestic violence by the applicants. The Court of CJSD, which is a competent court to decide the D.V. Act proceedings, would be required to analyze the evidence and decide the issue.

4. I have heard Mr. R. M. Pande, learned advocate for the applicants and Ms. D. J. Kukreja, learned advocate for the non-applicant. Perused the record and proceedings.

5. At the outset, it needs to be stated that as far as the issue of jurisdiction of the Family Court to try the D.V. Act proceedings is concerned, the same has been settled by the Coordinate Bench of this Court at Principal Seat in ***Rohan Shah .vs. Nishigandha Shah (2023 SCC Online Bom 2719)***. The Coordinate Bench, while allowing the transfer

of D.V. Act proceedings pending on the file of the Metropolitan Magistrate, Bhoiwada, Mumbai to the Family Court, Bandra, Mumbai, where the Hindu Marriage Petition filed by one of the parties was pending, has held that the D.V. Act proceedings filed under Sec. 12 of the PWDV Act, can be transferred to the Family Court inasmuch as the Family Court has jurisdiction to entertain and try such proceedings. The Coordinate Bench has considered the provisions of the D.V. Act to arrive at this conclusion. It is thus seen that the issue of jurisdiction of the Family Court to try the D.V. Act proceedings is no more *res-integra*.

6. In view of the above, the question is whether in the set of facts pleaded in the application by the applicants, the D.V. Act proceedings can be transferred to the Family Court or not? In my view, the petition filed for divorce by the wife, more or less on similar facts, is pending before the Family Court. Learned advocate for the applicants has made a statement across the bar that the husband has not opposed the prayer for divorce. Learned advocate for the non-applicant submits that apart from the decree of divorce, some other reliefs have been claimed in the divorce petition and the Family Court would be required to address those issues. There is hardly any dispute about the allegations in the D.V. Act proceedings about the domestic violence caused to the non-applicant by the applicants. In any case,

in both the matters, the parties would be required to adduce evidence and prove their rival contentions. It is pertinent to mention that the plea of divorce and the prayers in D.V. Act proceedings are based on similar set of facts. It would be convenient for the parties to adduce evidence before one Court. The decision of the case by a Family Court Judge, who by any means, is a senior Judicial Officer, would ensure final adjudication of the dispute on similar set of facts in one round of litigation. It needs to be stated that the applicants are not seeking any relief to gain unfair advantage over the wife. In my view, therefore, for the purpose of convenience of the parties and in peculiar facts of this case, it would be just and proper to transfer the D.V. Act proceedings pending on the file of 18th Joint Civil Judge, Senior Division Nagpur to the Family Court no.2, Nagpur.

7. It is undisputed that the applications made by the wife seeking interim relief are pending before the Courts, namely Family Court as well as the Court of the Jt.CJSD. In the facts and circumstances, in order to ensure protection of interest of the wife, the learned Judge shall see that such applications are disposed of expeditiously. Similarly, since the applicant/husband has not opposed the prayer for divorce, both the proceedings can be decided expeditiously.

8. Considering the nature of the dispute between the

husband and wife, expeditious disposal of the matters would be necessary. Hence, I pass the following order :

- i] The application is allowed.
- ii] The proceedings of Cri. Misc. Application No. 2790/2023 (*Smt. Pradnya Nachiket Deshpande .vs. Nachiket Rajendra Deshpande and others*) be withdrawn from the Court of 18th Joint Civil Judge Senior Division, Nagpur and transferred to Family Court No.2, Nagpur.
- iii] The Principal District and Sessions Judge, Nagpur shall withdraw the said proceedings from the file of 18th Jt.CJSD, Nagpur and transfer it to the file of Principal Judge, Family Court, Nagpur.
- iv] The Principal Judge, Family Court, Nagpur shall, on receipt of the proceedings, shall make over it to Family Court no.2, Nagpur.
- v] Learned Judge, Family Court No.2, Nagpur shall dispose of the proceedings expeditiously.
- vi] The application stands disposed of.

(G. A. SANAP, J.)