



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

12 MISC.CIVIL APPLICATION NO. 171 OF 2024

RASHMI W/O NIKHIL KALANE

VERSUS

NIKHIL S/O DEVIDAS KALANE

...

Advocate for Applicant : Mr. Gandhi Amol Subhash
Advocate for Respondent : Adv. Satyapal Thosar i/b. Mr.
Sachin Tigde

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CORAM : KISHORE C. SANT, J.

Dated : February 03, 2025

PER COURT :-

1. Heard the parties.
2. This application is at the instance of wife seeking transfer of the matrimonial proceedings i.e. HMP No. 1567/2023 pending before the learned Family Court at Nagpur to the Court of learned Civil Judge Senior Division Rahata, Dist. Ahmednagar.
3. The learned Advocate for applicant submits that the applicant-wife has already initiated three proceedings which are pending in the Court at Rahata i.e. (i) M.A. No. 125/2023 under Section 125 of Criminal Procedure Code

for maintenance at Judicial Magistrate First Class, Rahata (ii) M.A. No. 91/2023 under Sections 12, 18, 19, 20, 22 and 23 of the protection of Women From Domestic Violence Act, 2005 before the Judicial Magistrate First Class Rahata, (iii) Hindu Marriage Petition No. 167/2023 for restitution of conjugal right under Section 9 of Hindu Marriage Act before the learned Civil Judge Senior Division, Rahata. He submits that there is one more crime registered against the respondent-husband at the instance of applicant-wife bearing F.I.R. No. 652/2023 for the offences punishable under Sections 377, 498-A, 406, 504, 506 of Indian Penal Code. The proceedings filed at Rahata are filed prior in point of time than the divorce proceedings filed by the respondent-husband at Nagpur.

4. The learned Advocate for the applicant relies on judgment in the case of ***N.C.V. Aishwarya vs. A.S. Saravana Karthik Sha*** reported in 2022 AIR (SCW) 4318.

5. The learned Advocate appearing for the respondent Mr. Satyapal Thosar vehemently opposed the petition. The first ground he raised is about the jurisdiction.

He submits that the Court at Nagpur has jurisdiction to entertain the Hindu Marriage Petition. The applicant-wife is in fact not residing at Rahata. When the marriage had taken place at Ahmednagar, the applicant-wife has deliberately filed this application for transfer to Rahata, where there is no jurisdiction. He relies on the judgment in the case of ***Santhini vs. Vijaya Venketesh*** decided by Hon'ble Supreme Court in Transfer Petition (Civil) No. 1278 of 2016. The Hon'ble Supreme Court in the said judgment held that the convenience of the applicant-wife is not always a consideration. It is further observed that now a days, the video conferencing facility is available. Thus, he submits that, there is no need to transfer the proceedings. The applicant-wife can appear through Video Conferencing. The application is filed only with a view to delay the proceedings before the Trial Court. He thus prays for rejection of the application.

6. Considering the above submissions, this Court finds that there are three proceedings filed by the applicant-wife in the Court at Rahata, which are still pending. There

is one more criminal case that is also pending in the Court at Rahata. The respondent-husband has to appear in all four proceedings. This Court further finds a substance that in view of pendency of the proceedings under Section 9 of Hindu Marriage Act , it is desirable that the proceedings of the divorce and the restitution of conjugal right be decided by the same Judge to avoid conflict of judgments to that extent. He relies on the judgment in the case of ***N.C.V. Aishwarya vs. A.S. Saravana Karthik Sha*** reported in 2022 AIR (SCW) 4318. This Court finds that it is always desirable that the proceedings be decided by the same Court to avoid conflict of judgments. Therefore, this Court is inclined to allow the application. Hence following order :

ORDER

- i. The application is allowed.
- ii. The proceedings of HMP No. 1567/2023 pending before the learned Family Court at Nagpur is transferred to the Court of learned Civil Judge Senior Division Rahata, Dist. Ahmednagar.
- iii. After transfer, the applicant-wife shall not seek any

unnecessary adjournments.

iv. If the Court finds that unnecessary adjournments are sought by applicant-wife, the Court may pass appropriate order compensating the respondent-husband, if he personally remains present.

v. The respondent-husband is at liberty to apply for appearance through video conferencing whenever possible.

vi. The said application shall be considered properly by the Court.

vii. Considering that, the proceedings is of year 2023 the Trial Court to conclude proceedings as early as possible and preferably within one year from the date of such transfer.

viii. The application stands disposed of.

(KISHORE C. SANT, J.)

PRW