



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

MISC. CIVIL APPLICATION NO. 45/2024

Shri Rajendra Pundalik Ingole

Vs.

Sau. Savita w/o. Rajendra Ingole

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

Court's or Judge's orders

Mr. G. K. Bhusari Advocate for the Applicant.
Mr. R. C. Chandrakapure, Advocate for Non-applicant.

CORAM : MRS.VRUSHALI V. JOSHI, JJ.

DATED : 25/02/2025.

1. Heard.
2. The applicant is the husband of the non-applicant. The applicant has filed this application to transfer the proceedings pending on the file of 15th Joint Civil Judge, Senior Division, Nagpur under the Protection of Women from Domestic Violence Act, 2005 (for short, "D.V.Act") vide Miscellaneous Criminal Application No.1374/2016 to the Family Court No.2, Nagpur where the petition filed by the applicant under Section 13(1)(ia) of the Hindu Marriage Act, 1955 is pending.
3. The learned Counsel for the applicant has submitted that the marriage of the applicant and the non-applicant is second marriage. The applicant has filed the proceedings before the Family Court for divorce and, thereafter, he came to know the fact that the non-applicant has performed second marriage without obtaining divorce from her earlier husband and, therefore, alternatively, he prayed to declare the marriage as null and void.

4. The non-applicant has filed the proceedings under the provisions of the Protection of Women from Domestic Violence Act, 2005 which are pending before the Court of Judicial Magistrate. To avoid conflicting judgment, the applicant has prayed to transfer the proceedings under D.V.Act before the Family Court, Nagpur and no prejudice will be caused to the non-applicant as the proceedings are pending before the Nagpur Court only and she has to attend the proceedings in same Court.

5. The learned Counsel for the non-applicant vehemently opposed the application stating that the proceedings under D.V. Act are pending before the Civil Judge Senior Division, Nagpur. There is mandatory provision to decide the proceedings under D.V.Act within 60 days. It will take time if the proceedings are clubbed together. The non-applicant will not get the justice within the stipulated period.

6. The learned Counsel for the non-applicant has relied on the judgment of this Court in the case of **Anuraag Agarwal Vs. Poonam Agarwal Nee Mukim** reported in **2024 (6) ABR 250**, wherein this Court has rejected the application filed by the applicant for transfer of the petition under D.V.Act and direction is given to the Judicial Magistrate to decide the petition under D.V. Act within a period of 60 days.

7. I have heard both the learned Counsel appearing for the parties.

8. The transfer petition is filed by the applicant in order to avoid the conflicting judgment by two different Judges. The primary evidence in both the cases would be

same. If both the proceedings are conducted separately, the efficacy of cross-examination would be undermined. Transfer would reduce the burden of two different Courts.

9. The learned Counsel for the applicant has relied on the judgment of this Court in the case of ***Vijay Suryakant Kakade Vs. Anushka Vijay Kakade and Ors*** [*Misc. Civil Application No.498/2022*] wherein this Court has observed as under :

“Considering the pleadings of the parties in both proceedings pending before two different courts, there is a possibility of conflicting verdicts by two courts, and transfer will reduce the burden of one Court resulting in saving of judicial time; and moreover, the transfer of proceedings will not cause inconvenience to the wife as she will not have to travel outside Pune, therefore for the aforesaid reasons, in my opinion, both miscellaneous civil applications deserve to be allowed”.

10. In case in hand, the applicant is seeking transfer in Family Court No.2, Nagpur from Civil Judge, Senior Division, Nagpur and no inconvenience will be caused to the wife, who is contesting the petition under D.V. Act before the Civil Judge Senior Division.

11. On perusal of the judgment relied by the non-applicant, it appears that the case is regarding grant of maintenance. The Family Court can adjudicate the proceedings under D.V. Act and in many cases, such proceedings are transferred from the Magistrate Court to the Family Court.

12 Considering the ground which is raised by the applicant about conflicting judgment, the application is allowed and Miscellaneous Civil Application No.1374/2016

pending on the files of 15th Joint civil Judge, Senior Division, Nagpur is transferred to the Family Court No.2, Nagpur and it be clubbed with H.M.P.No.A-66/2016.

(MRS. VRUSHALI V. JOSHI, J.)