



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

MISC. CIVIL APPLICATION NO.409 OF 2024

Veena w/o Chandrashekhar Utane

..vs..

Chandrashekhar Bhauraoji Utane

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

Court's or Judge's orders

Ms Kirti Satpute, Advocate for the applicant.

Shri Shantanu S. Ghate, Advocate for the non-applicant.

CORAM: PRAVIN S. PATIL, J.

CLOSED ON : 08/09/2025.

PRONOUNCED ON : 11.09.2025.

Heard.

2. By the consent of the parties the matter is taken up for final disposal.

3. The applicant/wife by way of present application seeking transfer of Marriage Petition no.46/2024 filed by the non-applicant/husband before the Civil Judge, Senior Division Hinganghat to the Court of Civil Judge Senior Division, Chandrapur.

4. In the present case, it is undisputed fact that the marriage of the applicant and non-applicant was solemnized on 24.12.2020. The present applicant is the second wife of non-applicant. It is also not disputed that immediately after the marriage, there was matrimonial dispute and the applicant/wife started to reside at Chandrapur separately.

5. It is seen from the record that the present applicant had filed the proceedings under Section 12 of the Protection of Women from Domestic Violence Act, 2005 before the Judicial Magistrate First Class, Chandrapur. The said proceedings is presently pending. It is stated that in the said proceedings by order dated 11.03.2022, the non-

applicant was directed to pay amount of Rs.10,000/- per month to the applicant/wife towards the interim maintenance. The said order was challenged by the non-applicant before the learned District Judge, Chandrapur. However he did not prosecute the same and as per oral statement of the applicant, same has been withdrawn by non-applicant from the file of learned District Judge, Chandrapur, during the pendency of present proceeding.

6. It is also pointed out by the applicant/wife that initially non-applicant/husband has filed Hindu Marriage Petition No.50/2022 for restitution of conjugal rights before the learned Civil Judge Senior Division, Hinganghat. At that time, the present applicant has moved Misc. Civil Application no. 358/2022 before this Court. This Court vide order dated 30.06.2022 granted stay to the proceeding filed by the non-applicant.

7. The applicant/wife further stated that after the stay was granted by this Court, the non-applicant/husband has withdrawn the proceedings bearing No.50/2022 from the file of Civil Judge Senior Division, Hinganghat. In view of the withdrawal of said proceeding, Misc Civil Application No.358/2022 was disposed of as infructuous.

8. After withdrawing the proceeding of restitution of conjugal rights, the non-applicant/husband has filed the application for divorce under Section 13(1) of the Hindu Marriage Act. The applicant/wife has received notice of the same. Therefore, by way of present application, the applicant/wife has again approached to this Court to transfer the proceeding filed by the non-applicant/husband before the Civil Judge Senior Division Hinganghat bearing Marriage Petition no. 46/2024 to the court of Civil Judge Senior Division Chandrapur.

9. In response to the notice issued by this court, the non-applicant appeared in the matter and strongly contested the present application. It is stated by the non-applicant that with an ulterior motive the present application has been filed by the applicant/wife. It is stated by him that incorrect statement is made about the financial status. He stated that the applicant is running her boutique and earning handsome income and same is not disclosed in the matter. It is further stated that the applicant is having two brothers to look-after her and therefore, there is no inconvenience caused to her to attend the proceeding at Hinganghat along with her brothers.

10. It is further stated that the non-applicant is regularly depositing the amount of interim maintenance as ordered in DV proceedings. Hence, considering the fact that she is receiving Rs.10,000/- per month in PWDV No.110/2021 pending before Judicial Magistrate at Chandrapur, she can very well attend the proceedings at Hinganghat.

11. It is the submission of the present non-applicant that he being superannuated employee, he is unable to attend the proceeding at Chandrapur. Hence, the present application, which is devoid of merits, deserves to be rejected.

12. It is seen from record, looking to the controversy involved in the matter this Court vide order dated 10.02.2025 directed applicant/wife to file an affidavit to the extent that she is residing with her old aged mother and not with her brothers.

13. In view of the order of this Court, the applicant/wife on 24.02.2025 filed rejoinder in the matter. The applicant specifically denied that she is having boutique to earn her livelihood. The biodata of the applicant produced

on record by the non-applicant/husband, is denied by the applicant.

14. It is further stated by the applicant/wife that non-applicant is not regularly depositing the interim maintenance and there is an arrears of Rs.1,76,000/- till the filing of this application. The applicant has categorically stated that her two brothers are residing separately and present applicant is residing with her mother who is 90 years of age at Vitthal Mandir Ward whereas her brothers residing separately at Tukum.

15. It is further stated that her brother Ashok Bhakare is suffering from severe Osteo-astharitis knee and various deformities. In support of this submission, medical certificate dated 19.02.2025 is placed on record. It is further stated that another brother namely Arun Bhakare is suffering from the various health ailments and he is 67 years of age and surviving out of pension received to him. The medical certificate of Arun dated 17.02.2025 is placed on record. Hence both the brothers are not in a position to look-after the applicant and her old aged mother.

16. In the background of this factual position, she stated that non-applicant has made false statement that she is residing with her mother, sister and two brothers.

17. Both the Counsel has relied upon the judgment of Hon'ble Supreme Court of India in support of their submission. In view of the above, I have perused the entire record and gone through the judgment on which both the parties have relied upon.

18. The applicant has relied upon the judgment of the Hon'ble Supreme Court in the case of *N.V.C. Aishwarya vs. A.S. Saravana Karthik Sha 2022 SCC Online SC 1199*

particularly at paragraphs 9 and 10 as under :

“9. The cardinal principle for exercise of power under Section 24 of the Code of Civil Procedure is that the ends of justice should demand the transfer of the suit, appeal or other proceeding. In matrimonial matters, wherever Courts are called upon to consider the plea of transfer, the Courts have to take into consideration the economic soundness of both the parties, the social strata of the spouses and their behavioural pattern, their standard of life prior to the marriage and subsequent thereto and the circumstances of both the parties in eking out their livelihood and under whose protective umbrella they are seeking their sustenance to life. Given the prevailing socio- economic paradigm in the Indian society, generally, it is the wife’s convenience which must be looked at while considering transfer.

10. Further, when two or more proceedings are pending in different Courts between the same parties which raise common question of fact and law, and when the decisions in the cases are interdependent, it is desirable that they should be tried together by the same Judge so as to avoid multiplicity in trial of the same issues and conflict of decisions.”

19. The applicant also relied upon the judgment of the Hon’ble Rajasthan High Court in the case of ***Smt. Payal vs. Ranaram Veera 2018 2 CurCC 335*** particularly at paragraphs 27 on the point that distance alone may not be decisive factor but it has its own role while considering the convenience of the parties, particularly, a wife.

20. *Per contra*, learned Counsel for the non-applicant/husband has relied upon the judgment of Hon’ble Supreme Court of India in the case of ***Indian Overseas Bank, Madras vs. Chemical Construction Company and ors. (1979) 4 SCC 358***, wherein the Hon’ble Supreme Court has observed in paragraphs 16 and 17 as under :

“16. The principle governing the general power of transfer and withdrawal under Section 24 of the Code is that the plaintiff is the dominus litis and, as such, entitled to institute his suit in any forum which the law allows him. The Court should not lightly change that forum and compel him to go to another Court, with consequent increase in inconvenience and expense of prosecuting his suit. A mere balance of convenience in favour of proceedings in another Court, albeit a material consideration may not always be a sure criterion justifying transfer.

21. Non-applicant/husband has further relied upon the judgment of Gauhati High Court in the case of ***Priyanka Das (Bora) vs. Siganta Bora (2018) 6 Gauhati Law Reporters 672*** in paragraph 17, which reads thus :

“17. The aforesaid Advice Slip dated 2.2.2015 goes to show that there is no recurrence of renal problem of the petitioner. The Advice Slips do not indicate that the health condition of the petitioner is such that she is unable to undertake any journey whatsoever. It is seen from her own pleadings that she is commuting to and fro 40 kilometers a day from her place of residence to the place of her work. Therefore, the plea taken by the petitioner for transfer on the ground that she is unable to undertake journey is found to be without any merit.”

22. It is clear from the respective submission of both the parties and case laws on which they relied upon, that power under Section 24 of the Code of Civil Procedure is to be exercised to meet the ends of justice. In matrimonial matters, the Court have to take into consideration the economic soundness of both the parties, their behavioural pattern, their standard of life prior to the marriage and subsequent thereto and the circumstances of both the parties in eking out their livelihood showing their difficulties. Further one more important aspect, which is required to be considered is that if any proceedings is already pending in the

different Court between the same parties, it is desirable that both the proceedings should be conducted at one place.

23. It will be relevant to refer the judgment of ***Anindata Das vs. Srijit Das (2006) 9 SCC 197***, wherein it is held that each case must be judged on its facts and circumstances and observed in paragraph 4 as under :

“4. This Court is now required to consider each petition on its merit. In this case the ground taken by the wife is that she has a small child and that there is nobody to keep her child. The child, in this case, is six years old and there are grand parents available to look after the child. The Respondent is willing to pay all expenses for travel and stay for the Petitioner and her companion for every visit when the Petitioner is required to attend the Court at Delhi. Thus, the ground that the Petitioner has no source of income is adequately met.”

24. In the present petition, it is undisputed fact that non-applicant who was working as Assistant Teacher is recently superannuated on 30.09.2023. It is also not disputed that he is regularly attending the DV proceedings bearing no.110/221 pending on the file of Judicial Magistrate First Class, Chandrapur.

25. It is revealed from the record that non-applicant is not facing any health issue and his daughter from first wife is major and has completed her education and residing at different place to prosecute her study and job. Hence it is clear that non-applicant/husband has no responsibility of any one to look-after and therefore, he can very well attend the proceedings at Chandrapur.

26. *Per contra*, the applicant has responsibility of her old aged mother since her two brothers suffering from some health ailments and unable to look-after her and their mother.

Therefore, it is difficult for the applicant to attend the proceeding at Hinganghat.

27. In the present petition, both the Counsel had made counter allegations against each other. However, in this proceedings this Court is not expected to deal with said issues, but attempt has been made to settle their matrimonial dispute through mediation. Mediation is conducted however the matter was not settled.

28. Here in the present case, I am satisfied that the documentary evidence placed on record by the applicant/wife that she will cause more hardship to travel from Chandrapur to Hinganghat to attend the proceedings of divorce filed by the non-applicant/husband. On the other hand, non-applicant is already attending the proceeding filed under the DV Act by the applicant before the Judicial Magistrate at Chandrapur. Therefore, he will cause no inconvenience to attend the proceeding, if the same are transfer to the Chandrapur.

29. Hence, for the aforesaid reasons the application is allowed.

30. The Marriage Petition no.46 of 2024 filed by the non-applicant/husband pending before the learned Civil Judge Senior Division, Hingangaht be transferred to the Court of learned Civil Judge Senior Division, Chandrapur with the Record and proceedings of the same.

31. The parties to appear before the learned Civil Judge Senior Division, Chandrapur on 29.09.2025.

32. The Misc. Civil Application stands disposed of accordingly.

(PRAVIN S. PATIL, J.)