



Judgment

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

MISC. CIVIL APPLICATION NO.853 OF 2024

Harish s/o Ashok Walke,
aged 33 years, occupation service,
r/o plot No.118-A, near last
bus stop, Godhni Railway,
district Nagpur. **Applicant.**

:: VERSUS ::

Neha w/o Harish Walke, aged
32 years, occupation service, r/o
plot No.1, Chandripure Lay
out, behind Sanjeevani
Hospital, Godhni Road, Nagpur. **Non-applicant.**

**Mrs.P.Chandekar, Counsel for the Applicant.
Shri C.Dhruv, Counsel for the Non-applicant.**

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 30/01/2025

PRONOUNCED ON : 24/02/2025

JUDGMENT

1. The present application is filed by the applicant/husband for transfer of proceedings to the Family Court at Nagpur, which are as under:

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(1) Marriage Petition No.565/2021 pending before learned 16th Civil Judge Senior Division, Nagpur filed by the applicant/husband;

(2) Petition vide Civil M.A.No.393/2022 pending before learned 2nd Ad hoc District Judge, Nagpur filed by the applicant/husband;

(3) Marriage Petition No.434/2022 pending before learned 15th Joint Civil Judge Senior Division, Nagpur filed by the non-applicant/wife; and

(4) Regular Darkhast No.26/2024 pending before learned 2nd Joint Civil Judge Senior Division, Nagpur filed by the non-applicant/wife.

2. Heard learned counsel Mrs.P.Chandekar for the applicant/husband and learned counsel Shri C.Dhruv for the non-applicant/wife.

3. Learned counsel for the applicant submitted that the applicant and the non-applicant are husband and wife and their marriage is solemnized on 14.5.2019 at

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Gorewada, Nagpur. Out of the said wedlock, they are blessed with a child. After the marriage, there was rift in their relationship and the non-applicant/wife left her matrimonial house and started living separately. The non-applicant/wife is in Government Service. Whereas, the applicant/husband is having private job. Due to repeated disputes, they have decided to reside separately. The applicant/husband has filed application for restitution which is pending before learned 16th Civil Judge Senior Division, Nagpur. He has also filed a petition for custody which is pending before learned District Judge, Nagpur. The non-applicant/wife has filed a divorce petition which is also pending before learned Civil Judge Senior Division, Nagpur. As per the contentions of the applicant/husband, if all these proceedings are decided by learned Judge of the Family Court, there would not be difference of opinion. If all these proceedings are decided by the

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different courts, there would be multiplication of proceedings. As per Section 7 of the Family Courts Act, 1984, learned Judge of the Family Court is having jurisdiction to decide maintenance applications as well as custody matters. The Family Court is having specific place with healthy atmosphere as far as custody of the child is concerned.

4. Learned counsel for the non-applicant/wife has strongly opposed the application on the ground that the applicant/husband and the non-applicant/wife are lastly resided at Godhni and, therefore, learned Judge of the Family Court has no jurisdiction to entertain and decide these proceedings. He placed reliance on Notification which determines the jurisdiction of the Family Court. In view of that, it is prayed that the application be rejected.

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5. After hearing both the sides and perusing the entire record, there is no dispute that the marriage of the applicant/husband and the non-applicant/wife was performed at Gorewada within jurisdiction of Nagpur Municipal Corporation. In view of the Notification, the jurisdiction Family Court, Nagpur comprises the area of the Municipal Corporation of the city of Nagpur and area under the jurisdiction of the Kamptee Cantonment Board. Section 19 of the Hindu Marriage Act, 1955, states about the jurisdiction as to where petitions are to be presented. Said Section 19 reads as under:

19. Court to which petition shall be presented.- Every petition under this Act shall be presented to the district court within the local limits of whose ordinary original civil jurisdiction.-

(i) the marriage was solemnised, or

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(ii) the respondent, at the time of the presentation of the petition, resides, or

(iii) the parties to the marriage last resided together, or

(iii-a) in case the wife is the petitioner, where she is residing on the date of presentation of the petition, or

(iv) the petitioner is residing at the time of the presentation of the petition, in a case where the respondent is, at that time, residing outside the territories to which this Act extends, or has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of him if he were alive.

6. Section 7 of the Family Courts Act is relied upon and it is submitted by learned counsel for the applicant/husband that the Family Court cannot exercise

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powers of the Magistrate under the said provisions insofar as relief claimed in the Domestic Violence Act is concerned. The Family Courts Act was enacted in 1984. Whereas, Domestic Violence Act is enacted subsequently.

7. Admittedly, the petition is filed by the non-applicant/wife for grant of maintenance for the child.

8. There is no dispute that various proceedings are pending before different courts at Nagpur. The applicant/husband is seeking transfer of the said proceedings on the ground that if the same are decided by one court, there would not be multiplication of proceedings as no divergent views would be there.

The above said aspect is also dealt with by the Hon'ble Apex Court in the case of **D.Raja Rajeswari vs. R. Sathish Kumar**, reported in (2022) 2 SCC 329 wherein it is held that multiple proceedings between the same

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parties transferred and consolidation of all proceedings before one Court when warranted and while answering this question, the Hon'ble Apex Court held that it is in the interest of justice that all these matters be heard by the same Court and the matter was transferred by considering the convenience of the wife.

9. In view of the above discussion and considering convenience of parties, it would be in the interests of justice if all proceedings are decided by the Family Court at Nagpur to avoid multiplicity of the proceedings.

10. In this view of the matter, this Court passes following order:

ORDER

(1) The Misc. Civil Application is **allowed**.

(2) Following proceedings be transferred to the Family Court at Nagpur:

(1) Marriage Petition No.565/2021 pending before learned 16th Civil Judge Senior Division, Nagpur filed by the applicant/husband;

(2) Petition vide Civil M.A.No.393/2022 pending before learned 2nd Ad hoc District Judge, Nagpur filed by the applicant/husband;

(3) Marriage Petition No.434/2022 pending before learned 15th Joint Civil Judge Senior Division, Nagpur filed by the non-applicant/wife; and

(4) Regular Darkhast No.26/2024 pending before learned 2nd Joint Civil Judge Senior Division, Nagpur filed by the non-applicant/wife.

Application stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!

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