

IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 14TH DAY OF NOVEMBER, 2025

PRESENT

THE HON'BLE MR. JUSTICE S G PANDIT

AND

THE HON'BLE MRS JUSTICE GEETHA K.B.

MISCELLANEOUS FIRST APPEAL NO.103757 OF 2023

BETWEEN

SMT. RENUKA W/O. RAVINDRA HATTENNAVAR
AGE. 38 YEARS, OCC. HOUSEHOLD WORK,
R/O. C/O. SHETTAPA KANNDHARE
(MADDI HARIJAN KERI)
TELASANG TALUKA. ATHANI,
DIST. BELAGAVI-591265

...APPELANT

(BY SRI VENKATESH M. KHARVI, ADVOCATE)

AND

SHRI RAVINDRA S/O. NAGAPPA
HATTENNAVAR
AGE. 41 YEARS, OCC. RETIRED SOLIDER,
R/O. DEVARAJ NAGAR, TERDAL
TAL. RABAKAVI-BANAHATTI,
DIST. BAGALKOT-587315.

...RESPONDENT

(BY SRI S.C. BHUTI, ADVOCATE)

THIS MFA FILED U/S.28 OF THE HINDU MARRIAGE ACT,
1955, PRAYING TO CALL FOR RECORDS AND SET ASIDE THE

JUDGMENT AND DECREE DATED 17.08.2022, PASSED IN MATRIMONIAL CASE NO.01/2020 ON THE FILE OF THE SENIOR CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, AT BANAHATTI, ALLOWING THE APPEAL OF THE APPELLANT IN THE INTEREST OF JUSTICE AND EQUITY.

THIS APPEAL HAVING BEEN HEARD AND RESERVED ON 05.11.2025 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, DELIVERED THE FOLLOWING:

CORAM: THE HON'BLE MR. JUSTICE S G PANDIT
AND
THE HON'BLE MRS JUSTICE GEETHA K.B.

CAV JUDGMENT

(PER: THE HON'BLE MRS JUSTICE GEETHA K.B.)

This appeal is filed by appellant/wife under Sec. 28 of Hindu Marriage Act, 1955, praying for setting aside the judgment and decree passed in MC No.1/2020 dated 17.08.2022 on the file of Senior Civil Judge and JMFC, Banahatti and for such other reliefs.

2. For the sake of convenience and clarity, the parties will be referred with their ranks, as they were before the Trial Court.

3. Petitioner-husband has filed petition under Sec. 9 of the Hindu Marriage Act, 1955, praying for restitution of conjugal rights.

4. The case of petitioner before trial Court in nutshell is that marriage of petitioner and respondent was solemnized on 24.07.2012 as per Hindu rituals and customs prevailing in their community at Sri Yellamma Devi Temple at Talassanga village. Thereafter, both petitioner and respondent led happy marital life for 8 years; from the wedlock, they got a daughter and a son by name Diksha and Dhiraj. Thereafter, respondent started troubling the old aged parents of petitioner and not performing her day to day work. He advised her several times, but she did not mend her attitude. On the other hand, she had been to her parental house without any reasons and without informing him. Even after convening panchayats several times and advice from the elders, respondent has not changed her behaviour and not come back to live with petitioner. He further pleaded that he had married with one Asha alias Savakka and got two children from her and then he has obtained divorce from her and after obtaining divorce, he married the respondent. Now, respondent neglected to look after the children and old aged parents of petitioner.

Petitioner is ready to take care and responsibility of respondent. But at the instigation of her parents and others, she is not ready to join him. Hence, the petition for appropriate reliefs.

5. After service of notice, respondent appeared through her counsel and filed her objections to main petition wherein she admitted the marital relationship between her and the petitioner and also two children born to them. She has denied all other averments made in the petition regarding her behaviour. On the other hand, she contended that it is petitioner who is alcoholic and not maintaining her and her children properly and always quarreling with her and was not making any arrangement for their livelihood. Hence, she has also filed an application for interim maintenance of ₹.10,000/- and thus, prayed for dismissal of the petition.

6. After recording evidence of petitioner and marking documents on his behalf, the learned trial Judge has passed the judgment directing respondent to join the

petitioner to lead marital life by allowing the petition for restitution of conjugal rights.

7. Aggrieved by the same, respondent-appellant has filed the present appeal.

8. Heard learned counsel for appellant - Sri Venkatesh M. Kharvi and learned counsel for respondent Sri S.C. Bhuti and perused the appeal papers.

9. Learned counsel for appellant would submit that appellant is the wife of petitioner and she has filed her detailed objection statement. However, no opportunity is given to her to contest the petition. Immediately after filing the affidavit evidence by petitioner on next date of hearing, cross-examination was taken as nil; respondent evidence was taken as nil and immediately judgment was pronounced. Thus, no opportunity was given to her to contest the petition.

10. Learned counsel for respondent Sri S.C. Bhuti would submit that it is only because of the attitude of petitioner, she voluntarily left the company of petitioner and

there was no reasonable excuse for her to leave the company. The trial Court has given opportunity to her, but there was no representation from her side. Hence, the cross-examination of petitioner and evidence of respondent was taken as nil by trial Court. Hence, there is no need for interference on the aforesaid judgment. Hence, prayed for dismissal of appeal.

11. Having heard the arguments of learned counsel for appellant and respondent and on perusal of appeal papers with trial Court records, the following points would arise for our consideration in this appeal:-

“i) Whether the appellant proves that the learned trial Judge has not given proper opportunity to appellant-respondent to establish her defence and it requires interference?”

ii) Whether the remand of the matter to the trial Court is required?

iii) What order?”

12. Our finding on point Nos.1 and 2 is in "affirmative" for the following reasons:-

Point Nos.1 and 2: These points are considered together as they require common discussion.

13. The admitted facts of the case are that petitioner and respondent are husband and wife and their marriage was solemnized on 24.07.2012, as per the customs prevailing in their community at Sri Yallammadevi Temple in Telasanga village; they led marital life for about 8 years and they have got a daughter and son by name Diksha and Dhiraj.

14. The petitioner has produced the certified copy of order passed in MC No.36/2011 at Ex.P.1, which reveals that the marriage of petitioner with one Asha which was solemnized on 23.04.2004 was dissolved by decree of divorce dated 25.01.2012. After dissolution of said marriage, he married the appellant on 24.07.2012.

15. The trial Court records and order sheet reveals that the petitioner has filed his affidavit evidence on 08.07.2022; then it was posted to 29.07.2022; on which

date, he has produced certain documents at Exs.P.1 to P.10; on the same day, the cross-examination of petitioner was taken as nil as the advocate appearing for respondent was absent. Immediately, on next date of hearing on 03.08.2022, respondent's evidence was taken as nil and posted to judgment and judgment was pronounced on 17.08.2022.

16. The above facts reveal that no proper opportunity is given to the appellant/wife to contest the petition filed against her.

17. The trial Court, except considering the self-serving testimony of the petitioner, has not considered any other evidence and erroneously come to the conclusion that respondent has left the company of petitioner without any reasonable excuse. It is only by establishing the fact that the wife, without lawful ground has withdrawn from the society of the husband or neglected to perform the obligations imposed by law or by the contract of marriage, the husband would be entitled to get the decree of restitution of conjugal rights. However, without establishing

any of the above facts, the decree of restitution of conjugal rights was granted in favour of husband.

18. The above proceedings of trial Court reveal that no opportunity was given to appellant/wife to contest the petition and erroneously granted the decree casually. The relationship between husband and wife is very delicate and the reasons for dispute would be known to them only. Thus, without examining or enquiring the respondent, granting a decree under Section 9 of Hindu Marriage Act, 1955 by the trial Court is erroneous and it requires interference.

19. Considering all the above facts, we are of the opinion that matter is to be remitted back to trial Court for fresh disposal in accordance with law. Accordingly, point Nos.1 and 2 are answered in affirmative.

20. **Point No.3** - In view of findings on point Nos.1 and 2, we proceed to pass the following order:-

ORDER

- i) Appeal filed under Sec. 28 of the Hindu Marriage Act, 1955 is allowed.

- ii) The judgment and decree passed in MC No.1/2020 dated 17.08.2022 on the file of Senior Civil Judge and JMFC, Banhatti is hereby set aside and the matter is remanded to the trial Court for fresh consideration.
- iii) Parties to appeal are hereby directed to appear before trial Court without Court notice on 15.12.2025 at 11 a.m.
- iv) The trial Court shall provide opportunity to both the appellant and the respondent i.e., the wife and husband to lead evidence and to cross-examine each other.
- v) All the contentions of both parties are left open.

**Sd/-
(S G PANDIT)
JUDGE**

**Sd/-
(GEETHA K.B.)
JUDGE**

Vmb
CT-CMU, LIST NO.: