

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
FAMILY COURT APPEAL NO.4 OF 2012

Avinash s/o Kundlikrao Jadhav

Appellant

Versus

Mrs.Bharti w/o Avinash Jadhav

Respondent

None present for the appellant.

Mr.S.G.Chapalgaonkar, advocate for the Respondent

WITH
CIVIL APPLICATION NO.6096 OF 2015 IN
FAMILY COURT APPEAL NO.4 OF 2012

Bharti w/o Avinash Jadhav

Applicant

Versus

Avinash s/o Kundlikrao Jadhav

Respondent

Mr.S.G.Chapalgaonkar, advocate for the applicant.

None present for the Respondent.

**CORAM : R.M.BORDE &
P.R.BORA, JJ.**

DATE : 15th July, 2015

PER COURT:

1 Counsel for the appellant is absent today. On the last occasion also, when the matter was called out, Counsel for the appellant was absent.

2 This is an appeal presented by the husband objecting to the decree passed by the Family Court, Aurangabad, on the petition tendered by the wife seeking restitution of conjugal rights.

3 Learned Principal Judge, Family Court, issued directions to the wife to resume cohabitation with husband and return to the matrimonial home along with her son Nachiket.

4 The directions issued by the Family Court are erroneous. If the Family Court was intending to allow the petition filed by the wife, the learned Judge should have issued a direction to the husband to allow the wife to resume matrimonial ties. However, in the instant matter, while allowing the petition filed by wife, directions have been given to the wife herself instead of issuing directions to the husband.

5 Respondent-wife presented Misc. Application to the Family Court seeking necessary corrections in the order in exercise of powers under Section 152 of the Code of Civil Procedure. Learned Principal Judge of the Family Court, however, proceeded to reject the application observing that the mistake, that has been pointed out, is not a clerical or typographical mistake. In fact, the learned Judge is right in observing that it is a substantial mistake , which needs to be corrected.

6 The applicant wife has presented Civil Application No.6096 of 2015 objecting to the order dated 21.03.2012 passed by the Family Court in Civil Misc. Application No.6 of 2011. Even if it is presumed that the learned Principal Judge of the Family Court is correct in observing that the mistake committed by him is not a clerical or typographical mistake, the substantial mistake committed by the learned Judge deserves to be corrected at this

appellate stage.

7 The decree passed by the Family Court on 12.08.2011 and more particularly in clause no.3 of the operative order needs to be substitute by following order:

It is hereby directed to the petitioner-husband to forthwith restitute conjugal ties with Respondent-wife by taking her to the matrimonial home along with her son Nachiket.

8 Necessary corrections be effected in the degree passed by the Family Court on 12.08.2011.

9 Instant Appeal as well as Civil Application stand disposed of.

P.R.BORA
JUDGE

adb/fca412

R.M.BORDE
JUDGE