

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FAMILY COURT APPEAL NO. 08 OF 2016

Gajendra Dashrath Prasad Jaiswal,
Age-about 33 Years, Occu. : Business,
R/o Tuljai Niwas, New Mondha,
Nanded, Dist. Nanded. .. Appellant

Versus

Chanda @ Preeti Gajendra Jaiswal,
Age-about 25 Years, Occu. : Household &
Tailoring,
R/o Wakil Chawl, Lalbagh,
Burhanpur, Dist. Burhanpur, (M.P.) .. Respondent

Shri Ravindra B. Narvade Patil, Advocate for the Appellant.
Shri Gopal D. Kale, Advocate for the Respondent.

**CORAM : S. V. GANGAPURWALA AND
K. K. SONAWANE, JJ.
DATE : 27TH JULY, 2016.**

ORAL JUDGMENT (Per S. V. Gangapurwala, J.) :-

. Present appellant had filed petition U/Sec. 09 of the Hindu Marriage Act seeking restitution of conjugal rights. The appellant and respondent are husband and wife. Their marriage was solemnized on 05.05.2011. From the said marriage a daughter is born to the appellant and the respondent in the year 2012. It is the contention of the appellant that the respondent visited her parents place and did not return back. The efforts

were made, but to no avail. Petition of the appellant is dismissed. Aggrieved thereby present appeal.

2. Mr. Narwade, the learned counsel for the appellant submits that, the appellant led the evidence and has proved that the respondent has withdrawn from the company of the appellant without any reasonable cause. The affidavit of examination in chief filed by the respondent has been discarded by the Court. It is also observed by the Court that, even the cross examination conducted by the respondent of the appellant could not elicit any substantial material favourable to the respondent, still the Court has rejected the petition for restitution of conjugal rights. The provision of Sec. 9 of the Hindu Marriage Act has not been properly considered in its correct perspective, though the same is reproduced by the learned Judge. According to the learned counsel, as the respondent has withdrawn without reasonable cause from the society of the appellant and the same has been proved before the Court by pleadings as well as evidence, then there was no impediment for the Court to pass decree for restitution of conjugal rights.

3. Mr. Kale, the learned counsel for the respondent submits that, the appellant could not prove the allegations that the respondent is frequently visiting her parents. False allegations were made by the appellant. The respondent had visited her

parents house at Burhanpur, Madhya Pradesh and the appellant resides at Nanded. The appellant at no material point of time came to Burhanpur to fetch the respondent. Even notice was issued and no counter offer was made by the appellant to fetch the respondent. All these facts are properly appreciated by the Court. The learned counsel further submits that, the respondent stays with the daughter and it was not possible for the respondent to travel more than 500 kilometers and attend the Court. As such could not remain present for cross examination. An opportunity be given to the respondent.

4. We have considered the submissions canvassed by learned counsel for respective parties. With the evidence on record and considering the fact that the examination in chief of the respondent was discarded, naturally no illtreatment at the hands of the appellant was proved. In such circumstances, there was nothing on record to suggest that the respondent had withdrawn the company of the appellant for some reasonable cause. In such a case, in normal course decree for restitution of conjugal rights ought to have been awarded.

5. However, considering the fact that, the respondent was residing with the daughter more than 500 K.M. away and it is because of said fact, the respondent could not remain present to adduce evidence, we are inclined to grant one opportunity to the

respondent, though the appeal is filed by the appellant.

6. In the light of the above, the impugned judgment and decree is quashed and set aside. The parties are relegated before the Family Court, Nanded. The parties shall appear before the Family Court, Nanded on 22nd August, 2016. The parties are allowed to adduce further evidence. The appellant if he so chooses may adduce additional evidence and is also entitled to cross examine the respondent. The respondent is also entitled to adduce further evidence if she so desire.

7. Considering the fact that, matter is remitted back, the Family Court shall decide the Petition No. A- 126 of 2014 expeditiously and preferably within a period of six (06) months from the date of appearance of parties before it. The appeal accordingly is partly allowed. No costs. Record and proceedings be sent back forthwith.

Sd/-

[K. K. SONAWANE, J.]

Sd/-

[S. V. GANGAPURWALA, J.]

bsb/July 16