

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

Family Court Appeal No. 29 of 2014

District : Aurangabad

Santosh s/o. Harishchandra Reshwal,
Age : 24 years,
Occupation : Labourer,
R/o. H.No. 6/5/187, Kabirnagar,
Osmanpura, Aurangabad.

.. Appellant
(Original petitioner)

versus

Rakhi w/o. Santosh Reshwal,
Age : 21 years,
Occupation : Household,
R/o. Khandu Parsote (Purushottam),
M.S.E.B. Colony, Pawar Chal,
Near Bhosale Akhada,
Burudgaon Road,
Ahmednagar.

.. Respondent
(Original respondent)

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Mr. A.S. Usmanpurkar, Advocate, for the appellant.

Ms. S.L. Awchar, Advocate, for the respondent.

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**CORAM : S.V. GANGAPURWALA &
A.M. BADAR, JJ.**

DATE : 24TH FEBRUARY 2016

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

1. Mr. Usmanpurkar, the learned Counsel for the appellant, submits that the appellant had filed an application under Section 9 of the Hindu Marriage Act 1955, for restitution of conjugal rights. The Family Court had allowed the said application, however, imposed an onerous condition i.e. *'If the respondent (wife) insists upon the petitioner (husband) to reside separately, in that case, the petitioner shall make such necessary arrangement for their cohabitation and living together at Aurangabad'*. The learned Counsel submits that the present appeal is filed only to the extent of said condition. According to the learned Counsel for the appellant, the allegations made by the respondent (wife) as against father-in-law are baseless. There was no evidence worth the name to substantiate the same. Even the Court has not given any finding but criminal case was filed wherein father of the appellant has been acquitted and a finding has been given in the said criminal case, that accused no.2 therein did not assault the complainant in order to outrage the modesty. It is a case of clear acquittal. The learned Counsel for the appellant, as such, submits that Clauses 2, 3 and 4 of the operative part of the order be set aside.

2. Ms. Awchar, the learned Counsel for the respondent, submits that the respondent has led evidence before the Family Court thereby detailing the incident. The Court has considered the said evidence on record. It was also brought on record that after husband left the house and sister-in-law left for her education, the father-in-law of the respondent was alone in the house and the incident was detailed in the evidence. The

Court after considering the said aspect has rightly passed the order.

3. We have considered the submissions of respective parties. The Family Court has allowed the application filed by the present appellant under Section 9 of the Hindu Marriage Act and has directed the respondent (wife) to join the company of the appellant within two months from the date of order and discharge the matrimonial obligation towards the appellant as his wife.

4. The matter was referred to Mediator by this Court. The learned Mediator has reported that the mediation has failed.

5. Upon perusal of the judgment delivered by the Family Court, it is manifest that the Family Court has not come to a conclusive finding as to the acts alleged by the respondent (wife) against father of the appellant (husband). Clauses 2, 3 and 4 of the operative order could not have been passed. Respondent (wife) has not challenged the judgment and order allowing the application under Section 9 of the Hindu Marriage Act and directing the respondent (wife) to join the company of the appellant (husband). The husband has challenged only Clauses 2, 3 and 4 of the operative order.

6. The Family Court could have allowed the application under Section 9 of the Hindu Marriage Act, *in toto*, or rejected it, however, could not have passed such a conditional order, more particularly, when no conclusive finding has been arrived at by the Family Court.

7. In the result, the Appeal is allowed.

The operative order in the judgment delivered by the learned Principal Judge of the Family Court, Aurangabad, in Petition No. A-169/2009, on 9th March 2011, is hereby modified and following clauses in the operative order are hereby deleted :—

“ If the respondent (wife) still desires and insists upon the petitioner (husband) to reside separately, in that case, the petitioner shall make such necessary arrangement for their cohabitation and living together at Aurangabad.

This direction is given since the respondent (wife) has expressed the alleged apprehensive acts of her father-in-law of taking undue liberty with her by touching her body, when the respondent was residing in the matrimonial home for a very short period immediately after the marriage.

The petitioner, if required shall discharge the liabilities of his parents' family and shall also properly discharge his married obligations towards his wife and to strike the right balance accordingly. ”

Save and except aforesaid modification, rest of the judgment and

order of the Family Court is not disturbed.

8. The Family Court Appeal is disposed of accordingly. No costs.

(A.M. BADAR)
JUDGE

(S.V. GANGAPURWALA)
JUDGE

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