

restitution of conjugal rights. The said petition was decided *exparte* on 24.7.2012, since neither the Appellant nor the Respondent remained present. The Respondent, therefore challenged the said decision by filing the appeal before the District Judge, Kolhapur. This appeal was decided and the matter was remanded back to the Family Court. In the meantime, the Respondent-husband also filed a petition for divorce on the ground of desertion and cruelty. The learned Family Court, however, rejected the application filed for dismissal of the petition for restitution of conjugal rights.

3. The learned counsel appearing for the Appellant submitted that the petition for restitution of conjugal rights and the petition for divorce was not maintainable, and therefore, the petition for restoration of the petition under Section 9 of the Hindu Marriage Act, 1955 is liable to be dismissed.

4. It is not possible to accept this submission. It is to be noted that the Respondent-husband had filed an application for recalling an *exparte* dismissal of his petition filed under Section 9 of the Act. The said application was allowed and the matter was remanded back to the family court. The Respondent – husband also

filed a petition for divorce on the ground of cruelty and desertion.

5. In our view, Family Court was justified in not dismissing the petition filed under Section 9 of the Act. The District Court has observed that the petition under Section 9 of the Act was not decided on merits., and therefore, it was remanded back to the Trial Court. It is always open for the Respondent – husband to file an appropriate application in both these matters. At this stage, for the purpose of withdrawing one of them, we do not see any reason to interfere with the order passed by the learned District Judge dated 26th February, 2016. All contentions of the Appellant are kept open. Reserving the right of Appellant to make an appropriate application, appeal is disposed of.

6. In view of disposal of the appeal, Civil Application No. 165 of 2016 filed therein does not survive, and is accordingly disposed of.

Sd/-
[Mrs. SWAPNA S. JOSHI, J.]

Sd/-
[V. M. KANADE, J.]

Vinayak Halemath