

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP 227 No.527 of 2016**

Nitin Deshmukh, S/o Kirti Kumar Deshmukh, Aged about 38 years, Resident of Dallirajhara, Chowk Shivcalony, Ward No.07, Balod, District-Balod (CG)

----Petitioner**Versus**

Smt. Sarla Deshmukh, W/o Nitin Deshmukh, Aged about 33 years, Resident of Raveli, Post-Ravan, P.S. Suhela, District Baloda Bazar-Bhatapara (CG)

---- Respondent

For Petitioner	:	Mr.B.P.Singh, Advocate
For Respondent	:	Mr.Anand Dadriya, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****21/08/2017**

1. The respondent/wife filed a suit for restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955 (hereinafter called as "Act of 1955"). Ex-parte decree for restitution of conjugal rights was granted on 24.1.2015, against which, the present petitioner/judgment debtor has filed an application under Order 9 Rule 13 of the CPC, which is pending consideration. During pendency of the aforesaid application, the respondent/wife filed an application under Order 21 Rule 33 of the CPC for grant of periodical payment/maintenance. The said application has been granted by learned District Judge, Baloda Bazar. Questioning that order, the present writ petition under Article 227 of the Constitution of India has been filed.

2. Mr.B.P.Singh, learned counsel appearing for the petitioner, would submit that neither the District Judge at the time of passing the decree has fixed the time limit within which the decree has to be complied with nor learned Executing Court by the order has fixed the time within which the decree has to be complied with, therefore, the impugned order is liable to be set aside.
3. Mr.Anand Dadriya, learned counsel appearing for the respondent, would submit that the fact remains that the petitioner has failed to comply with the decree of restitution of conjugal rights passed by the trial Court and therefore, the Executing Court is absolutely justified in passing the order of periodical payment granting the maintenance to the extent of ₹ 6000/-. He would rely upon the judgment of the Bombay High Court in the matter of **Vijendra B. Singh Vs. Uma Vijendra Singh**¹.
4. I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove.
5. Order 21 Rule 33 of the CPC provides as under:-

“33. Discretion of court in executing decrees for restitution of conjugal rights.- (1) Notwithstanding anything in rule 32, the court, either at the time of passing a decree against a husband for the restitution of conjugal rights or at any time afterwards, may order that the decree shall be executed in the manner provided in this rule.

¹ AIR 2010 Bom 131

(2) Where the court has made an Order under sub-rule (1), it may order, that in the event of the decree not being obeyed within such period as may be fixed in this behalf, the judgment debtor shall make to the decree holder such periodical payments as may be just, and, if it thinks fit, require that the judgment debtor shall, to its satisfaction, secure to the decree holder such periodical payments,

(3) The court may from time to time vary or modify any order made under sub-rule (2) for the periodical payment of money, either by altering the times of payment or by increasing or diminishing the amount, or may temporarily suspend the same as to the whole or any part of the money so ordered to be paid, and again revive the same, either wholly or in part as it may think just.

(4) Any money ordered to be paid under this rule may be recovered as though it were payable under a decree for the payment of money.”

6. The question is whether the present petitioner has failed to execute the decree for restitution of conjugal rights and whether the Family Court has passed a decree for restitution of conjugal rights indicating the decree shall be executed in the manner provided in Rule 33 of the CPC. Therefore, what is required to be established is that husband has not obeyed the decree within the time fixed for compliance thereof.
7. The Bombay High Court in the matter of **Vijendra B. Singh** (supra) held as under:-

“6. The Court gets power to pass a direction against judgment-debtor to make periodical payment in the event the decree is not obeyed within such time as may be fixed in this behalf. Therefore, while passing an order in terms of

Sub-rule 2 of Rule 33, of fixing the date from which the periodical payment is payable, the Court will have to consider all the facts and circumstances and conduct of the parties. At the same time, it must be noted that it is not necessary for the wife (decree-holder) to establish that there is willful disobedience of the decree on the part of husband-judgment debtor. The Court gets jurisdiction to pass a direction for periodical payments when the judgment-debtor fails to obey the decree within time limit provided. In a given case where time limit is provided while passing a decree and if there is non-compliance, there may be some justification for passing a direction against the judgment-debtor to make periodical payments from the date of passing the decree. In a given case, a direction may be issued to make such periodical payments from the date on which period provided for compliance of the decree is over. No hard and fast rule can be laid down in that behalf.

9. On conjoint reading of sub-rules 1 and 2 of Rule 33, it is very clear that the power under Sub-rule 2 of fixing the periodical payments has to be exercised by the Executing Court as such power has to be exercised only after the husband fails to comply with the decree and, therefore, in sub-rule 2 of Rule 33, the husband has been referred to as the judgment-debtor. "

8. Likewise, in the matter of **Mukeshkumar Ishwarlal Bhatt Vs. Kailashben Mukeshkumar Bhatt**², the Gujarat High Court held as under:-

"6.....However the Order XXI Rule 33 is an additional provision made under Civil Procedure Code for discretion of the Court in execution of the decree for restitution of conjugal rights. The language of sub-rule (1) of Rule 33 speaks for an additional measure and the said aspect is apparent from the language used. "Notwithstanding anything in Rule 32". Therefore, the additional discretion provided with the Executing Court under Rule 33 is not by way of a substitution of the mode provided for execution under Rule 32 of Order XXI but is in addition of such mode provided under Rule 32, therefore,

could be termed as an additional discretion vested by Order XXI Rule 33 with the Executing Court. As per Order XXI(1) Rule 33, sub-rule (1) provides for passing of an order by way of execution of the decree for restitution of conjugal rights, meaning thereby, the Court may exercise discretion for fixing up of the time schedule or the mode and the manner in which decree of restitution of conjugal rights may be obeyed by the parties to the proceedings, when it is passed against the husband. Sub-rule (2) provides that in the event of decree not being obeyed within the said period as fixed by the Court, the judgment debtor shall make to the decree holder such periodical payment as may be just and proper by the Court for satisfaction of the decree. Sub-rule (3) provides for the modification and alteration of the order, if circumstances so demand. Sub-rule (4) provides for recovery of the money so ordered to be paid as the decree for the payment of money. Therefore, it is apparent that in a case where the decree for restitution of conjugal rights is to be executed, the Court has power to attach the property of the person against whom the decree of restitution of conjugal rights has been passed as per Sub-Rule 32 of Order XXI. Further if it is a decree passed against the husband, under Rule 33 of Order XXI, the aforesaid, additional mode has been provided by vesting discretion to the Court executing the decree for restitution of conjugal rights."

9. I am respectfully agreement with the view expressed by the Gujarat High Court in the matter of **Mukeshkumar Ishwarlal Bhatt** (supra) and applying the principle of law laid down by the Gujarat High Court in the aforesaid judgment (supra), if the facts of the present case are examined, it is quite vivid that the Family Court did not indicate any time limit for complying the decree nor the Executing Court has indicated any time limit within which the decree has to be complied with, therefore, it is not

established that husband has failed to obey the decree for restitution of conjugal rights within the time fixed for compliance thereof as time has not been fixed by the Court for compliance thereof.

10. In view of above, the impugned order is set aside. However, the respondent is free to make an application under Order 21 Rule 33 of the CPC for fixing the time limit for compliance of decree for restitution of conjugal rights passed in favour of the respondent. In that event, the Executing Court will do well to consider and dispose of the said application expeditiously.
11. The writ petition is allowed to the extent indicated hereinabove.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-