

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

**FAMILY COURT APPEAL NO. 16 OF 2007
WITH
CIVIL APPLICATION NO. 7 OF 2012**

Machindra s/o. Rangnath Jadhav .. Appellant
Age. 34 years, Occ. Government Service, [original
Residing at ST Colony, Fazalpura, respondent]
Aurangabad.

Versus

Mrs. Kojagiri w/o. Machindra Jadhav .. Respondent
Age. 28 years, Occ. Household [original
residing C/o. Yamunabai Madhavrao Salve, applicant]
Ramnagar, Mukundwadi,
Aurangabad.

Mr.Hemant Surve, Advocate for the appellant.
Mr.C.V. Dharurkar, Advocate for the respondent.

**CORAM : T.V.NALAWADE &
S.M.GAVHANE, JJ.**

DATED : 12.09.2017

JUDGMENT [PER : S.M. GAVHANE, J.] :-

. The appellant-husband [hereinafter referred to as "the respondent"] against whom decree for restitution of conjugal rights under section 9 of the Hindu Marriage

Act has been passed in Petition No. A-359/06, filed by the respondent-wife [hereinafter referred to as "the petitioner"] by the Principal Judge, Family Court, Aurangabad, has preferred this appeal challenging the said decree.

2. Facts giving rise to the institution of the present appeal are as under :-

A) The petitioner was married to the respondent-husband on 07.01.2001 as per Bouddha customs and rites. From the said wed-lock the petitioner has begotten daughter – Priyanka on 02.11.2002 and daughter Pournima on 25.02.2005. The marital tie between the petitioner and the respondent is existing.

B) The petitioner-wife alleged that after marriage, after some days, her in-laws, brother and sister of the respondent-husband and her husband started picking quarrels with her on petty grounds. Thereafter she was

pregnant. Her husband did not provide proper medicines to her. The petitioner's mother incurred expenses of the medicines, but there was abortion. The petitioner again resumed co-habitation and was pregnant. Her husband and people from her in-laws' house removed ornaments from her person and on beating her, left her to her parental house for delivery. On 02.11.2002 she had begotten daughter – Priyanka. Therefore, the respondent's family became nervous. Nobody from the side of the respondent husband came to see the petitioner and her child. She was already threatened that if she delivers female child, she should not come for cohabitation.

C) The petitioner-wife further contends that the respondent/husband filed petition No.A-13/2003 for divorce and as she had a desire to cohabit with the respondent-husband, there was settlement and she went to cohabit. After 5-6 months thereafter the respondent and his family members again started ill-treating the petitioner. They were saying that she would again deliver

female child and therefore she should be kept under control and that no expenses of her medicines should be made and that there is no alternative than to marry second wife, in-case again she delivers female child. Other family members of the respondent instigated as above to the respondent and the respondent used to assault the petitioner. It is contended that without giving any medical aid to the petitioner, she was left to her parental house. Thereafter, on 25.02.2005 she has begotten daughter – Pournima. Again nobody came to see the petitioner and her child.

D) Thereafter, again the respondent-husband filed Petition No.A-183/2005 for divorce. The said petition was dismissed with costs. According to the petitioner, despite harassment as above, for the future of her two daughters and due to affection with respondent/husband, the petitioner through her brother, mother and relatives made attempt to persuade the respondent to cohabit her. But the respondent did not allow her to cohabit with him.

Lastly on 15.10.2006, the petitioner, her mother and younger brother went to the house of the respondent for cohabitation. The wife of brother of the respondent had phoned the respondent and till he comes the petitioner and her relatives were made to stand waiting. The respondent was repeatedly requested to cohabit with the petitioner, but he said that he would not cohabit with her, as maintenance has been fixed to the petitioner and on saying so, the respondent threatened the petitioner that she should be driven out by police, if she did not leave his house. The petitioner is young and considering future of her daughters, she has to cohabit with the respondent. She has been unnecessarily deserted. Therefore, she filed the petition for restitution of conjugal rights.

3. The respondent/husband appeared and filed reply at Exh.7. He admitted his relationship with the petitioner and with the daughters. He denied almost all the contentions of the petitioner which are made against

him. He has come with a case that while the petitioner was cohabiting with him, she used to quarrel with him and elderly persons in his family on petty grounds and used to insult them. She was convinced, but there was no change in her behavior. He has incurred medical expenses of the petitioner to remove defect in her blood. When he and his relatives went to see the child after delivery of the petitioner, they were abused, beaten and pushed. Therefore, NC Case No.35/2002 dated 09.03.2003 was registered in Mukundwadi Police Station. After second delivery of the petitioner also same treatment was given to him and his relatives by the petitioner, her brother and mother. Therefore, he was compelled to file the petition for divorce which was dismissed. He is paying maintenance of Rs.2000/- per month to the petitioner regularly. To cause financial loss and mental cruelty to him and to defame him, the petitioner has filed petition for restitution of conjugal rights by making false complaints against him. He contends that the petitioner is of a quarrelsome nature, she is greedy and she has

given threat to his life. Therefore, if she comes to cohabit with him, she would commit anything wrong with his life. There is a danger to his life from the petitioner. The matter was referred for conciliation, but there was no settlement. There is report to that effect. On the above grounds, the respondent-husband had prayed to dismiss the petition.

4. The petitioner and the respondent adduced oral as well as documentary evidence in support of their respective contentions. Considering the said evidence, the learned Judge of the Family Court on holding that without reasonable cause the respondent has left company of the petitioner wife and that therefore the petitioner is entitled to decree for restitution of conjugal rights against the respondent, allowed the petition by judgment and order dated 06.03.2007 and directed the respondent to take the petitioner-wife for cohabitation within one month and to allow her to perform her duty as a wife.

5. It is the above said decree for restitution of conjugal rights is under challenge in this appeal by the respondent-husband on several grounds mentioned in the memorandum of appeal. Notice was issued to the petitioner-wife. She appeared through advocate.

6. We have heard the learned advocates appearing for the respondent and the petitioner and with their assistance we have perused the evidence adduced by the parties. We have perused the impugned judgment and decree.

7. There is no dispute that marriage between the petitioner and the respondent was solemnized on 07.01.2001 as per Bouddha rites. The marital tie between them as husband and wife is existing. From the said wedlock, the petitioner has begotten daughter-Priyanka on 02.11.2001 and daughter-Pournima on 25.02.2005. This petition is the sixth proceeding between the petitioner and the respondent. After birth of elder daughter-

Priyanka, respondent had filed petition No. A-13 of 2003 for divorce against the petitioner and it was settled on 04.03.2003 and then the petitioner started cohabiting with the respondent. After birth of second daughter Pournima the respondent – husband on 27.06.2005 again filed petition No. A-183 of 2005 for divorce against the petitioner-wife. On merit the said application was dismissed on 30.01.2006. On 16.01.2006 the petitioner wife had filed application for maintenance under section 125 of the Code of Criminal Procedure for herself and her two minor daughters against the respondent, so also on 12.06.2006 she filed petition No. B-12 of 2006 against the respondent-husband for possession of Stridhan articles. Both the applications were heard together and on 16.09.2006 said applications were partly allowed. The petitioner-wife had filed execution petition as per decree in petition No. B-12 of 2006 for possession of Stridhan articles and said decree was satisfied and execution petition was disposed of. There is also no dispute that respondent-husband is serving in police

department at Aurangabad.

8. The only controversy between the parties is that according to the petitioner-wife, respondent-husband has without reasonable cause left her company and made her to stay with her widowed mother at Ramnagar, Mukundwadi, Aurangabad and therefore she is entitled to decree for restitution of conjugal rights, as she desires to cohabit with the respondent-husband. Denying the same, the respondent-husband contended that the petitioner is of quarrelsome nature. She, her brother and her mother abused, beaten and threatened him when he had gone to see the petitioner and her child after delivery of the petitioner. There is danger to his life from the petitioner, if she comes to him to cohabit with him. To prove their respective contentions, mainly the petitioner has relied upon her oral evidence and oral evidence of her brother and the respondent has relied upon his sole oral evidence.

9. Now coming to the oral evidence of the petitioner (Exh.22) she deposed that after 3-4 months of the marriage, she was pregnant. Her husband left her to her mother's house as there was defect in her blood. Miscarriage has taken place. Further, she deposed that on resuming cohabitation her husband and rest of his family members started blaming her that intentionally she terminated pregnancy. She tried to convince them. However, they were not in a mood to listen her. They started blaming her that she is a lady of sick nature. She requested her husband to provide medical facility to her. However, her husband refused to provide the same and directed her to proceed at her mother's house. According to her, her mother provided medical facility to her and the defect in her blood was cured. Then she conceived. During pregnancy, respondent assaulted her and left her at her mother's house. After she delivered female child Priyanka on 02.11.2002, her husband or any person from her in-laws' house did not turn to see even the newly born daughter. So also, she deposed that the

respondent filed petition for divorce and said was settled and the respondent admitted to take her for cohabitation. Accordingly, she resumed cohabitation. Thereafter, initially for 3-4 months, cohabitation was joyful. Thereafter, again she was being blamed that she can only deliver female child. However, she continued to cohabit. Then she was pregnant. The respondent-husband and his family members started quarreling with her on petty reasons saying that she is useless and she must be left at her mother's house. They threatened that if she delivers female child, doors would be closed for her forever. On 25.05.2005 she has begotten female child. The respondent and his family members again did not turn even to see newly born daughter. Thereafter, the respondent again filed divorce petition and it was dismissed. Thereafter, she visited on many occasions to the respondent and requested him to allow her to resume cohabitation. But, the respondent refused to cohabit with her. So also on 15.10.2006 she visited residential quarter of the respondent in Kranti Chowk Police line,

Aurangabad with her brother and mother. At that time, the respondent was not in the house and they were made to stand out of the matrimonial home. She requested the respondent to allow her to cohabit. However, he declined to allow her to cohabit and he threatened that in the event she did not return, he would drive her out of house. Therefore, she was compelled to take shelter of her mother's house and to file petition for restitution of conjugal rights.

10. In the cross-examination, the petitioner has denied that the respondent and his family members approached her to see her and the newly born daughter and that the birthday function was a grand function. So also she has denied that as she was not resuming cohabitation, the respondent filed petition to compel her to cohabit and discharge marital duties. She has, of course, stated that she has not lodged report alleging assault by the respondent. Thus, the evidence of the petitioner that the respondent without any reason compelled her to stay

at her mother's house and left her company is not shattered in her cross-examination on behalf of the respondent.

11. The evidence of the petitioner that the respondent without any just ground left her company, is corroborated by her brother Rajkumar Salve (PW-2) at Exh.23, as he has deposed that the respondent is not allowing the petitioner to cohabit with him and therefore she is residing with them. So also, he has deposed that on 15.10.2006, he, his sister-the petitioner, her two daughters and his mother went to the quarter of the respondent at Kranti Chowk police line, Aurangabad. But, they were made to wait and that the respondent did not allow the petitioner to resume cohabitation saying that she may file proceeding in the Court. So also, he deposed that the respondent directed them to leave the premises immediately, otherwise, he would call police. His evidence is not shattered in the cross-examination on behalf of the respondent. Thus, on the basis of evidence

of the petitioner and her brother, it can be inferred that without justifiable ground, the respondent left company of the petitioner wife.

12. Besides above oral evidence, admittedly, the respondent had filed divorce petition No. A-13 of 2003 against the petitioner and it was settled on 04.03.2003. So also he had filed divorce petition No. A-183 of 2005 and it was dismissed on 30.01.2000. Both the petitions were filed for divorce on the ground of cruelty. It was held in petition No. A-183 of 2005 by the Family Court that the respondent failed to prove that after solemnization of marriage, the petitioner treated the respondent with cruelty. Thus, it is obvious from the contentions in both the above petitions, which were filed by the respondent-husband that he was interested in getting divorce from the present petitioner-wife and he was not ready to cohabit her. This shows that without any just reason, he left company of the petitioner-wife. So also as observed earlier, admittedly, the petitioner

had filed maintenance application under section 125 of Cr.P.C. against the respondent and it was allowed and maintenance of Rs.2000/- per month was granted to the petitioner and her daughters. While deciding the said application, it was held that the respondent refused and neglected to maintain the petitioner and her daughters. Admittedly, the findings in the said maintenance application as well as in divorce petition No. A-183 of 2005 have attained finality as said orders were not challenged in the higher court by the respondent-husband. The findings in the maintenance application show that it is the respondent who neglected and refused to maintain the petitioner. This shows that without any just reason, the respondent withdrawn himself form the company of the petitioner. Thus above documentary evidence also corroborates the evidence of the petitioner and her brother about the respondent leaving company of the petitioner without just reason.

13. As against the evidence of the petitioner, the

respondent-husband in his sole oral evidence at Exh.25 deposed in accordance with his case that the petitioner started quarreling with him. After some days she became pregnant. She was under treatment. Without informing anybody she proceeded towards her mother's house for delivery. When he visited his mother-in-law's house and asked the petitioner as to why she left the matrimonial house, she disclosed that her first delivery will be at her mother's house. He deposed that after 8-10 days of delivery of the petitioner on 22.11.2002 he went to his mother-in-law's house to see the petitioner and newly born child and at that time his three brothers-in-law and his mother-in-law were present and his mother-in-law declared that the petitioner requires to work hard and therefore she would not be sent. He stated that his mother-in-law did not allow him to see newly born child and drove him out of her house. So also he deposed that on 09.01.2003 his brother Motilal and his wife Smt. Hirabai went to the house of his in laws and they were assaulted by his brothers-in-law - Kiran, Pramod and Raju

and his mother-in-law abused them and also assaulted them. Therefore, according to him NC Case came to be registered against his in-laws. Further he has stated that after 8-10 days of second delivery of the petitioner on 25.02.2005, he visited his mother-in-law's house to see the petitioner and her daughter. At that time also his mother-in-law and three brothers-in-law did not allow him to enter the house and said that the petitioner requires to work hard and he was driven out of his matrimonial house, when he requested his mother-in-law to allow him to take petitioner and her two daughters. He has been cross-examined on behalf of the petitioner. His above evidence is not shattered. He has not examined his brother Motilal and his wife as his witnesses. Therefore, his uncorroborated evidence on the background that he had filed divorce petitions as referred earlier against the petitioner and second petition was dismissed on merits is not sufficient and believable to infer that the petitioner went to her mother's house at her own and that there is danger to his life if the petitioner is

brought to his house for cohabitation as alleged by him.

14. For all the reasons discussed above and on considering evidence of either side, on the basis of evidence adduced by the petitioner, it can be said that without reasonable excuse, the respondent has withdrawn himself from the company of the petitioner. The petitioner was 28 years old and the respondent was 33 years old when the petition was filed. They both were young when the petition was filed. Therefore, considering the above all circumstances and the fact that the respondent has without reasonable excuse withdrawn himself from the company of the petitioner, the petitioner is entitled to decree for restitution of conjugal rights under section 9 of the Hindu Marriage Act, as has been granted by the Trial Court. We find no fault with the said decree. Therefore, the appeal being devoid of merits, the same is liable to be dismissed. Accordingly, we dismiss the appeal in the circumstances with no order as to costs.

15. As regards Civil Application No. 7 of 2012, which has been filed by the petitioner-wife to allow her to produce copy of judgment dated 30.01.2006 in petition No. A-183 of 2005 is concerned, said copy is already produced on record by the petitioner with list Exh.29 as can be seen from the record and proceeding of the petition No. A-369 of 2006 for restitution of conjugal rights and the same has already been considered as observed earlier and was considered by the Trial Court also. Therefore, Civil Application No. 7 of 2012 is disposed of.

[S . M . GAVHANE , J .]

[T . V . NALAWADE , J .]