

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

FAMILY COURT APPEAL NO. 18 OF 2013
WITH
CIVIL APPLIACATION NO. 14109 OF 2014

Reena w/o Mahendra Wahule,
Age: 23 years, Occu: Household,
R/o C/o Sheelabai w/o Bhimrao Jadhav,
Siddharthnagar, N-12, HUDCO,
Near Mangesh Medical, Aurangabad.

....Appellant

Versus

Mahendra s/o Kaduba Wahule,
Age: 28 years, Occu: Service,
R/o : Siddharthnagar, N-12, HUDCO,
Aurangabad.

....Respondent

Mr. A.C. Deshpande, Advocate for applicant.

Mr. V.P. Latange, Advocate for respondent.

**CORAM : T.V. NALAWADE AND
ARUN M. DHAVAL, JJ.**

RESERVED ON : 14/11/2017

PRONOUNCED ON : 15/11/2017

JUDGMENT : [PER T.V. NALAWADE, J.]

1) The appeal is filed to challenge the decision of the Family Court, Aurangabad given in proceeding No. A-106/2012, which was filed by the present appellant, wife under section 9 of Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act' for short). The Family Court has dismissed the proceeding. Both the sides are heard.

2) In short, the facts leading to the institution of the appeal can be stated as follows.

The relevant dates and incidents in the present matter as follows :-

- (i) 21-02-2010 - Date of marriage.
- (ii) February 2011 - Parties started living separate from each other.

3) It is the case of wife that illtreatment was started to her by the husband and his relatives on the ground that proper dowry was not given to them and proper arrangements were not made at the time of marriage and due to that the husband and his relatives were feeling that they were insulted. It is the contention of wife that husband used to give beating to her and her in laws were proving to be hurdle even in keeping physical relationship with the husband.

4) It is the case of wife that on two occasions in January 2011, the father in law had made advances towards her with ill intention and on those occasions, he was under influence of liquor. It is her contention that she did not disclose the first incident, but when the second incident took place, she disclosed it to the husband and his relatives, but instead of supporting her, they assaulted her. It is her case that she was then taken to the house of parents. It is her

case that when attempt was made to reach her to matrimonial house, husband and his relatives asked to give amount of Rs.50,000/- as dowry. It is her case that this demand was not met with and so, she was not allowed to resume cohabitation. It is her case that she was driven out with threat and so, since February 2001 she has been living with her parents.

5) It is the case of wife that she was under severe stress due to the conduct of the husband and his relatives and so, after starting to live with the parents, she went to her sister, who is resident of Alibag for staying there for few days. It is her case that false information was spread by husband that she had eloped with her boy-friend. It is her case that husband then started asking her to give divorce and even notice of divorce was published by husband in the newspaper viz. Lokmat dated 29.3.2012. It is her case that husband want to marry second wife and so, he wants divorce. It is her case that she is ready to resume cohabitation. On these grounds, she had prayed for decree of restitution of conjugal rights.

6) The husband filed written statement and he denied that he and his relatives have given illtreatment to the wife. It is his case that on the first day in the married life, the wife had disclosed to him that she had love affair and only due to the pressure of her relatives,

she had married with him. It is his case that wife was reluctant to cohabit with him and she used to go to the house of her parents time and again. It is his case that only due to the insistence of her parents and relatives, she used to return for short stay in the matrimonial house.

7) It is the case of husband that the wife does not like him. It is his case that the wife used to say that there are ghosts in the house. It is his case that in his house the wife had tried to hang herself. It is his case that wife had made false allegations against his father and those allegations were made only to enable her to return to the matrimonial house. It is his case that the wife wanted divorce from him as she wanted to live with her lover. It is the case of husband that ultimately, wife ran away and eloped with lover on 27.6.2011. It is his case that the mother of wife was required to give missing report to police. It is his case that police traced the wife on 9.8.2011 in Mumbai.

8) It is the case of husband that on 15.11.2011 he had sent notice to the wife, asking her to return to matrimonial house, but she did not return and she has no intention to resume cohabitation. It is his case that only to harass him, the proceeding for restitution of conjugal rights is filed by the wife.

9) The Family Court framed issues. In view of nature of reliefs claimed, it was necessary for the wife to prove that the husband had withdrawn from the society without reasonable excuse.

10) For getting the relief, the wife examined herself. The husband examined himself and he examined one Police Constable to prove the missing report given by the mother of the wife.

11) The evidence of the wife is as per the aforesaid contentions made in the petition. In the evidence, she has stated about the two incidents in which her father in law had allegedly made advances to her. According to her, these incidents had taken place in the month of January 2011. The rival contentions show that immediately after the allegations made by the wife against father in law, the parties started to live separate. It is the case of wife that she was severely beaten and so, she was taken to the house of parents by her mother, when it is the case of husband that she had left his company on her own.

12) The wife had taken the dispute to grievance cell by making an application dated 4.6.2011. Copy of the said application is on record and it shows that the allegations were made mainly

against mother in law. It was informed to the grievance cell by the wife that she had gone to the house of parents for treatment and after the treatment when she wanted to return to matrimonial house, the husband refused to accept her back in the matrimonial house. She contended that the husband was not ready to resume cohabitation due to instigation of his parents. The submissions and the record show that before grievance cell also the wife did not turn up as she was missing for about one and half months and mother had supplied false information to the grievance cell that the wife was sick and due to that she was not coming before the grievance cell. Such submissions were made on 11.8.2011 and 14.9.2011. The record does not show that the wife had expressed grievance against the father in law of aforesaid nature.

13) The record like copy of missing report given by mother is produced and it shows that the wife had left the house of parents on 9.8.2011 without informing anybody and so, the parents were required to be given report on 11.8.2011. The report shows that they had made inquiry with all relatives. Thus, it needs to be presumed that the parents had made inquiry with sister of wife, who is resident of Alibag and only after that, they had given missing report. The record of missing report shows that the wife was traced at a place from Panvel tahsil on 19.9.2011 and then she was handed

over in the custody of brother of wife.

14) In the cross examination, wife has admitted that she did not remain present before grievance cell. When there is record that she was traced at Palhat, Tahsil Panvel, she has given evidence that she was with her sister at Alibag. The name of the person with whom, she was probably living during this period is suggested to her and even photographs of the wife taken with the said person were confronted to her. She has only denied that she knows the person appearing in photographs and she had stayed with that person. These photographs are exhibited, but no evidence is given by the wife to show that the photographs are manipulated. She could have examined her sister and she could have produced some record to show that for about one and half month she was living with her sister, but that kind of evidence is not given by the wife.

15) The husband has given evidence in rebuttal. He has given evidence which is in accordance with the aforesaid pleading in written statement. He has examined Police Head Constable Bodke to prove the missing report. Though Bodke has tried to say that the wife was found at Alibag with sister, the report is otherwise and the contents of the report do not support the oral evidence of Bodke. When there is record, the record needs to be preferred to the oral

evidence.

16) There is copy of notice given by husband to wife dated 17.11.2011. This record shows that when the wife was traced by the police, the husband gave notice and informed that he was still ready to accept her back in the matrimonial house. In spite of giving opportunity, the wife did not return to the matrimonial house and the record shows that only after publication of the notice of divorce by the husband in newspaper, she filed proceeding under section 9 of the Act. The Family Court has used the provision of section 14 of the Act and has considered the aforesaid material as evidence against the wife. This Court holds that the Family Court has not committed error in considering the aforesaid record. The learned counsel for husband placed reliance on some observations made by this Court in that regard in the case reported as **2013 (3) Mh.L.J. 193 [Shivanand Damodar Shanghag Vs. Sujata Shivanand Shanbhag]**. This provision empowers the Family Court to consider some material as evidence which includes the statements and documents and this provision is exception to the general rule of evidence regarding admissibility of such material in evidence. Due to these circumstances also, it was necessary for the wife to take steps to prove that the photographs were fabricated, manipulated. In any case, the circumstance of giving missing report by mother of the

wife is such a strong circumstance that it has created probability as suggested by the husband. The Family Court has used the provision of section 23 of the Act and it has held that when the wife is wrong doer, the benefit of the circumstances like the circumstances available in the present matter cannot be given to her. This Court holds that it is not possible to interfere in the finding of the Trial Court which is on the basis of aforesaid material. The Trial Court has held that the husband has not withdrawn from the society of the wife. Thus, the wife has failed to prove her case. In the result, the appeal stands dismissed. Civil Application stands disposed of.

[ARUN M. DHAVALÉ, J.]

[T.V. NALAWADE, J.]

SSC/