

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

13 FAMILY COURT APPEAL NO.15 OF 2018

SACHIN DIGAMBAR JAGDHANE
VERSUS
MADHURA SACHIN JAGDHANE

...
Advocate for Appellant : Mr. Godhamgaonkar A.G.
Advocate for Respondent : Mr. M.D.Narwadkar

CORAM : T.V.NALAWADE
AND
SUNIL K.KOTWAL, JJ.

DATE : JANUARY 7, 2019

O R D E R :

Admit. Mr. Narwadkar, learned counsel waives service for the respondent.

2. Heard finally with the consent of learned counsel for the parties.

3. This Court has gone through the pleadings mentioned in the decision given by the Family Court. It is the case of husband that the wife, without any excuse, left his company and she is not returning back to resume cohabitation. Marriage took place on

15.2.2001 and this couple has one son, born on 7.4.2003. The contention of the husband is that it was the desire of the wife that he should live separate from his parents and accordingly he started living separate, but wife was not satisfied. It is the case of the husband that he sustained loss in the business and he could not satisfy the luxurious demands of wife and then she left his company.

4. It is the contention of the wife that she was never happy with the husband as she had lived luxurious life in the house of her parents.

5. The wife did not file written statement and 'No WS' order was passed in the proceeding. Though there was 'No WS' order and though there is an explanation to Section 9 of the Hindu Marriage Act, 1955 showing that the burden of proof lies on the respondent, if such a proceeding is filed and it is contended that the respondent has withdrawn from the

society without reasonable excuse, the Trial Court has framed issue in such a way that burden was cast on the husband. The trial Court observed that there is no pleading in respect of the ground of desertion, in such a case the unrebutted evidence could have been considered by the trial Court, but that is not done.

6. Learned counsel for the wife submits that the wife wants to file written statement and wants to contest the proceeding.

7. This Court holds that the proceeding needs to be allowed for setting aside the 'No WS' order and for remanding the matter back to the trial Court.

8. In the result, the appeal is allowed. The decision given by the Family Court in proceeding No. A-290 of 2016, dated 8.12.2017 is set aside and the matter is remanded back to the Family Court. Within

three months from the date of receipt of record, the Family Court will decide the matter. Within 15 days from the date of this order, the wife should file written statement and such permission is granted to the wife. It will be presumed that 'No WS' order is set aside by this Court. If written statement is not filed within 15 days from today, there will be again 'No WS' order against the wife and the matter will be decided accordingly by the Family Court.

[**SUNIL K.KOTWAL, J.**] [**T.V.NALAWADE, J.**]

dbm