

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

**FAMILY COURT APPEAL NO. 65 OF 2018
WITH CIVIL APPLICATION NO. 14145 OF 2018**

Sheetal D/o. Sham Padulkar
(alleged to be Sheetal W/o. Mahesh Mane),
Age : 23 years, Occ. Education
R/o. Yevti, Taluka & District Osmanabad

... APPELLANT
(Org. Defendant)

VERSUS

Mahesh Bhagwat Mane,
Age : 26 years, Occu. Business,
R/o. Koyna Nagar, Latur,
Taluka & District Latur

... RESPONDENT
(Org. Plaintiff)

Mr. S. G. Chapalgaonkar, Advocate for the appellant
Mr. Hansraj B. Pawar, Advocate for respondent

**CORAM : SUNIL P. DESHMUKH &
 S.M. GAVHANE, JJ.**

DATED : 15-10-2019

P.C. :-

1. In the family court appeal order dated 04-10-2018 passed by family court, Latur in Petition No. A 263/2017 thereby allowing petition for restitution of conjugal rights filed by respondent-husband is under challenge. Proceedings were initiated by respondent. Upon service, appellant's counsel had put in appearance around 24-01-2018. It is the contention of appellant that it had been difficult for her to visit Latur because of threat to her life and limbs, and in the circumstances timely instructions could not be given to the advocate appearing on her behalf and written statement was not filed. In the circumstances no written statement order came to be passed. While an

application for setting aside no written statement order alongwith the written statement had been tendered, the court had insisted upon personal presence of appellant. Since the same was not possible, the order was taken to the high court and while the high court had posted the matter on 04.10.2018, decision has been rendered by the family court on 04.10.2018.

2. Learned counsel Mr. Chapalgaonkar, therefore, urges this court to consider the same and remand the matter to enable the appellant to file written statement and adduce evidence.

3. Learned counsel for respondent, however, submits that there is no substance in the contentions about threat to life and limbs of appellant and that it is a convenient and casual plea being taken. He purports to refer to very circumstances as have been referred to by learned Judge of family court and submits that there is no substance in the contention of appellant.

4. Looking at the circumstances instead of getting entangled into allegations against each other, it appears to be expedient that appellant be given an opportunity to defend the case on merits and to have resolution of the disputes once for all. As such, we consider that petition No. 263/2017 be restored before the family court at Latur for further prosecution from stage of submission of written statement setting aside no written statement order. Further proceedings shall take place as expeditiously as possible, and be disposed of preferably within a period of six months from the date of receipt of

this order, including, considering possibility of resolution of dispute through mediation, once again, before the family court, if the parties so desire.

5. The impugned judgment and order in view of aforesaid is set aside. The order ordains that the appellant shall file written statement in the matter within a fortnight of appearance after remand.

6. This order is subject to payment cost of Rs. 10,000/- (Rupees Ten Thousand) to be payable to respondent-husband. The cost be deposited in the family court to be withdrawn by the husband within a period of four weeks from today.

7. In view of the aforesaid, instead of getting protraction of matter for filing of written statement, the written statement, if any, already filed shall be deemed to have been taken on record by the family court. Consequently, no written statement order shall also be deemed to have been set aside.

8. Family court appeal stands disposed of.

9. In view abovesaid civil application is disposed of.

[S.M.GAVHANE, J.]

[SUNIL P. DESHMUKH, J.]