

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
CIVIL WRIT PETITION NO. 9279 OF 2016**

Sau. Seema Ratnakant Patil ... Petitioner

V/s.

Shri Ratnakant Ramchandra Patil ... Respondent

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Mr. Abhijit Tambe I.by Mr. P.M. Arjunwadkar for the Petitioner.

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**CORAM : SMT. SADHANA S. JADHAV, J**

**DATED : 29TH AUGUST 2019.**

**P.C. :**

1. Heard.
2. This Court had issued a fresh notice to the Respondent on 22<sup>nd</sup> February 2018. On 14<sup>th</sup> March 2018 the learned counsel for the petitioner sought time to serve the unserved respondent. On 12<sup>th</sup> June 2019, this court had observed that none appears for the respondent although served and in order to give a fair opportunity to the respondent, the matter was adjourned to three weeks. On 3<sup>rd</sup> July 2019 and 8<sup>th</sup> August 2019 none appeared for the respondent and therefore, this court has proceeded to hear the petition on the merits of the matter.
3. The petitioner herein takes an exception to the order dated 2<sup>nd</sup> January 2016, passed by Joint Civil Judge Senior Division, Panvel, thereby directing the Medical Officer of Civil Hospital, Alibaug to

ascertain the mental condition of the petitioner and submit a report to that effect.

4. A letter was issued to Civil Hospital, Alibaug, pursuant to the order dated 2<sup>nd</sup> January 2016 the petitioner was granted time to attend Civil Hospital, Alibaug for medical examination.

5. The learned Civil Judge Senior Division has not given any time frame for examination of the petitioner and therefore, the order has not been implemented till today although the present petition is filed in the year 2016.

6. The circumstances which lead to passing of the said order are as follows “ *the Petitioner herein has filed a Hindu Marriage Petition No. 69 of 2009 seeking restitution of conjugal rights*”. The respondent-husband has specifically contended that he got married to the petitioner on 13<sup>th</sup> May 1999. The respondent-husband specifically contended that the petitioner was suffering from mental disorder and therefore, after she had conceived pregnancy the Doctor had advised them to medically terminate the pregnancy. The petitioner has given birth to a son on 12<sup>th</sup> March 2001. The Petitioner has also given birth to a daughter out of the said wedlock. The respondent had taken her to the mental hospital and she was under going treatment for the same. He had also offered to pay maintenance to her and the child. However, he had refused restitution of conjugal rights on the ground that she was suffering from mental disorder.

7. The respondent was aggrieved by the fact that the petitioner and her father had suppressed her mental disease from the respondent. That, she had take a shock treatment eight times in two months and that the respondent was bearing all the expenses of her treatment. She had also attempted to take over dose of the Tablets prescribed to her. He has named Dr. Kale from Uran who was giving treatment to the Petitioner. Since, she had conceived pregnancy the administration of medicines meant for mental disorder were discontinued and she had again started suffering from the same symptoms. He had also taken the petitioner to the hospital of Dr. R.K. Patkar, Kokade Hospital and had admitted her. He had also expressed his depression for continuing with the marital life with the person who is suffering from mental disorder. He has specifically stated that on 26<sup>th</sup> February 2000, she had attempted to commit suicide by kerosene on herself. He has mentioned in the written reply the names of witnesses who had attempted to reconcile them. According to him on 14<sup>th</sup> July 2007 the Petitioner has withdrawn herself from the house of her husband along with the children without informing anybody. In the given circumstances, this Court is of the opinion that since the respondent has mentioned the names of the Doctors and the treatments given to her and also produced documents on record to that effect, which include medical report in a Miscellaneous Criminal Case No. 76 of 2013 filed under the Domestic Violence Act it would be necessary to establish the same by adducing cogent evidence. The petitioner herself had contended that she needs money for medical treatment as she is suffering from the mental disorder disease.

8. In these circumstances, the learned counsel for the petitioner submits that he would file application before the Civil Judge Senior Division, Panvel to direct the respondent to prove the medical record by examining the Doctors, witnesses or anybody else. The learned Civil Judge Senior Division shall consider said application made by the petitioner within four weeks from the date of filing of the application.

9. Therefore, no fruitful purpose would be served by sending the petitioner to Civil Hospital, Alibaug for examining her. The application filed by the petitioner in Miscellaneous Criminal Case No. 76 of 2013 can also be considered by the learned Civil Judge Senior Division.

10. In view of the above discussion, the order dated 2<sup>nd</sup> January 2016 is hereby quashed and set aside.

11. The petitioner is at liberty to file an appropriate application to call upon the respondent to examine the witnesses in order to prove the medical records.

12. The Petitioner is also at liberty to establish that she is suffering from mental ailment to substantiate her claim for granting/enhancing maintenance.

13. The petition stands disposed of. The learned Civil Judge Senior Division, Panvel shall not be influenced by the observations made hereinabove as they are restricted to the order dated 2<sup>nd</sup> January 2016.

**(SMT. SADHANA S. JADHAV, J)**