

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

CIVIL REVISION APPLICATION NO. 70 OF 2022

Vajeeha Khan w/o Rizwan Khan Pathan

...Applicant

Versus

Rizwan Khan s/o Moosa Khan Pathan

...Respondent

.....
Mr. M. B. W. Khan h/f Mr. S. B. Khan, Advocate for the applicant
.....

CORAM : R. G. AVACHAT, J.
DATE : 07th JULY, 2022

PER COURT : -

1. The challenge herein is to the order rejecting application moved under Order VII Rule 11(d) of the Code of Civil Procedure.

2. The applicant herein is the wife of respondent. The respondent has filed a suit for restitution of conjugal rights. The learned Advocate for the applicant invited attention of this Court to the title of the suit wherein it has been stated – suit for

restitution of conjugal rights under Section 9 of the Code of Civil Procedure. According to learned Advocate for the applicant, Section 9 of the Civil Procedure Code has no application to the suit for restitution of conjugal rights between persons professing Islam. According to him, when husband has contracted second marriage, he is not entitled for the relief of restitution of conjugal rights. Learned counsel relies upon the judgment of the Madras High Court in the case of **Kothar Beevi alias Badrunnisha v. K. Aminudeen** reported in **AIR 2018 Madras 60**.

3. Considered the submissions advanced.

4. Article 281 of the Mohammedan Law speaks of a suit for restitution of conjugal rights. It is true that in the plaint caption, it has been described that a suit to have been filed under Section 9 of the Code of Civil Procedure. One has to go by the substance and not the form or title. It is not that a suit for restitution of conjugal rights cannot be filed by a Muslim spouse. So far as the claim that the plaintiff would not be entitled to

restitution of conjugal rights on the ground of having contracted second marriage is concerned, it is a matter of evidence. The trial Court has rightly rejected the application. In paragraph 9 of the plaint, it has been specifically averred that the applicant-wife (defendant in the suit) left matrimonial home on 03.09.2020 taking the children along with her.

5. This Court finds that none of the clauses of Order VII Rule 11 of the Code of Civil Procedure gets attracted. No fault can be found with the order passed by the trial Court. This Court is, therefore, not inclined to even issue notice in the matter. The application is **dismissed**.

[R. G. AVACHAT]
JUDGE