

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

990 FAMILY COURT APPEAL NO.50 OF 2021

**RAHUL PRAKASH GAVANDE
VERSUS
PUSHPA RAHUL GAVANDE**

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Advocate for Appellants : Mr. Chate Govind B
Advocate for Respondent : Mrs. Jayshri P. Reddy (appointed)

**CORAM : MANGESH S. PATIL &
S. G. CHAPALGAONKAR, JJ.**
DATE : 17.02.2023

PER COURT :

Heard the learned advocate for the appellant-husband.

2. The petitioner-husband is challenging the judgment and order passed by the Family Court Aurangabad primarily dismissing his petition on the ground that it had no jurisdiction.

3. Though the learned Judge of the Family Court has made some attempt to refer to the merits as well, in our considered view, once having reached a conclusion that it had no jurisdiction, the only course open for it was to return the petition or at least should have desisted from making an attempt to decide the matter on merits as well.

4. Be that as it may, the petitioner's stand that he being the resident of Aurangabad and the couple having last resided together at Aurnagabad, by virtue of clause (iii) of Section 19 of the Family Court Act, the Family Court

at Aurangabad had the jurisdiction is discarded by the learned Judge firstly on the ground that the averment in regard to the last residence was written in hand in the petition after the office had raised the objection. Secondly on the ground that though the appellant was directed to file an affidavit in that respect he had failed to do so.

5. As has been submitted by the learned advocate for the appellant we have gone through the record and proceeding of the Family Court but do not find any such order or direction to him to file an affidavit.

6. Simultaneously, we cannot ignore the fact that the petitioner had tendered affidavit-in-lieu of examination in chief *inter alia* mentioning that in the year 2014 when the couple was residing in Aurangabad that she had left his company. The learned Judge could have referred to and met this statement in the examination in chief before jumping to the conclusion that there was no evidence regarding the couple having last resided together at Aurangabad.

7. Over and above, the respondent-wife had not appeared in spite of service of summons and had not controverted the averments in the petition or had challenged the statements in the examination in chief. It appears that the learned Judge merely suspected that the stand of the petitioner that the couple had resided together lastly at Aurangabad was not believable. It was expected that if the learned Judge was of the considered view based on the material before her that the statement of the petitioner was liable to be

discarded, it should been done emphatically instead of drawing inferences based on surmises and conjectures.

8. We allow the appeal partly. We set aside the judgment and order under challenge and remand the appellant's petition to the Family Court for decision afresh including the issue regarding place of suing, by extending an opportunity to the appellant of leading additional evidence, if he so chooses.

9. Learned advocate Mrs. Reddy was appointed to represent the respondent and we quantify her fees at Rs. 2000/- (Rs. Two Thousand only) to be paid through the High Court Legal Aid Services Authority.

(S. G. CHAPALGAONKAR, J.)

(MANGESH S. PATIL, J.)

mkd/-