



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
FAMILY COURT APPEAL NO. 10 OF 2023**

AMEYA ARUN JADHAV
VERSUS
SWAPNA AMEYA JADHAV

...

Mr. Jitendra Vijay Patil, Advocate for Appellant.
Mr. M. M. Bhokariker, Advocate for the Respondent.

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**CORAM : SMT. VIBHA KANKANWADI AND
S. G. CHAPALGAONKAR, JJ.
DATED : 17th JANUARY, 2024.**

P.C.

1. The present appeal has been filed by the original respondent-husband challenging the judgment and decree passed by the Judge, Family Court, Jalgaon in Petition No.A-78/2020 on 13th July 2022, thereby decreeing the petition for restitution of conjugal rights under Section 9 of the Hindu Marriage Act against him.

2. Heard learned Advocate Mr. Patil for the appellant as well as learned Advocate Mr. Bhokariker for the respondent at the stage of admission.

3. It has been submitted that the appellant could not file written statement because of the fault on the part of the Advocate he had engaged before the Trial Court. No effective steps were taken for filing the written statement and, therefore, it is said that proper opportunity to contest the matter was not given. Learned Advocate for the appellant, therefore, prays for admitting the matter.

4. Learned Advocate for the respondent submits that it was because of the fault on the part of the Advocate, the appellant has not filed the written statement, but Trial Court has not erred in proceeding with the matter in absence of written statement.

5. The first and foremost fact that has to be on record that even after this appeal was filed, the matter was referred for mediation. However, the learned Mediator by report dated 27th July 2023 has given the report that Mediation has failed. Secondly, it appears that the appellant had filed petition for divorce, however, it came to be dismissed in default and his application for restoration is pending. The petition which was filed by the wife was for restitution of conjugal rights and it has been decreed. The husband has been directed to resume cohabitation with the wife. Now, the said decree is challenged under the count that due to the fault on the part of the Advocate he had engaged before the Trial Court, he could not file the written statement. In fact, in appeal memo there is absolutely no mention that the appellant had given instructions to the Advocate he had engaged before the Trial Court for the preparation of the written statement. Unless instructions have been given, the Advocate cannot prepare written statement. Therefore, no fault can be found with the Advocate for non-preparation of the written statement. It appears that the appellant has unnecessarily blamed his Advocate before the Trial Court. When it was found by the learned Trial Judge that the respondent before him has failed to file written statement inspite of giving opportunity, the Trial Court was justified in proceeding with the matter. There is no procedural error committed by the Trial Court. Due to his own negligence, it appears that the appellant could not file written statement and, therefore, no ground is made out to admit the matter.

6. Hence, Family Court Appeal is dismissed at threshold.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE