



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

FAMILY COURT APPEAL NO. 13 OF 2024

**Sau. Shashikala W/o. Madanlal
Chauragade**, Aged about 54 years,
Occupation _ Household, resident
of 102, 1st Floor, Ram Apartment,
Chota Taj Bagh, Nagpur, Tahsil and
District Nagpur.

.... APPELLANT

// VERSUS //

**Shri Madanlal son of Bhaulal
Chauragade**, Aged about 57 years,
Occupation Service, resident of New
Officer Colony, Takiya Ward,
Bhandara, Tahsil and District
Bhandara.

.... RESPONDENT

Shri A.D.Dangore, Advocate for appellant.
Shri Bhushan Dafle, Advocate for respondent.

CORAM : SMT. M.S. JAWALKAR &
M.W. CHANDWANI, JJ.

DATE : 29/11/2024

ORAL JUDGMENT (PER: SMT. M.S. JAWALKAR, J.)

Heard learned counsel for both the parties.

2. The learned council for the appellant submits that, the learned Family Court, Bhandara is totally erred in granting the decree of divorce, specifically when, the ground was not available at the time of filing of petition for divorce.

3. The learned counsel for the respondent vehemently opposed the appeal on the ground that, there was only few days remained to be completed when the judgment came to be passed. Section 13(1-A)(ii) of the Hindu Marriage Act, 1955 (for short, Act of 1955), is reproduced for the convince as under:-

13. Divorce:-(1)

“(1-A) Either party to a marriage, whether solemnized before or after the commencement of this Act, may also present a petition for the dissolution of the marriage by a decree of divorce on the ground—

(i)

(ii) that there has been no restitution of conjugal rights as between the parties to the marriage for a period of one year or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.”

4. In the present matter, the petition under Section 9 of the Act of 1955 for Restitution of Conjugal Rights was filed on 07/01/2022 and it came to be decided by the judgment and decreed dated 19/07/2022. The respondent filed the petition for decree of divorce on 14/12/2022 wherein the learned Family Court, Bhandara passed the judgment and decree on 17/7/2023 for divorce. The learned Judge, Family Court, Bhandara in the impugned judgment itself observed that, at the time of passing of the judgment, few days remained to be completed to complete one year for passing of decree of Restitution of Conjugal Rights. In our considered opinion, the learned Family Court, Bhandara passed an erroneous and illegal order for decree of divorce, specifically, when it does not provide any relaxation in the said period of one year after passing of the decree under Section 9. Thus, the ground for divorce is made available only after a period of one year, if the respondent in the petition under Section 9

after passing of decree does not resume cohabitation. As such, the impugned order passed by the learned learned Judge, Family Court, Bhandara is liable to be quashed and set aside. Accordingly, we proceed to pass the following order:-

ORDER

- (1) The appeal (FCA) is allowed.
- (2) The impugned order dated 17/07/2023 passed by the learned learned Judge, Family Court, Bhandara in Petition No. A-126/2022 is hereby quashed and set aside.
- (3) The appeal is disposed of.
- (4) Pending application(s), if any, stand(s) disposed of.

(M.W. CHANDWANI, J.)

(SMT. M.S. JAWALKAR, J.)