

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.475 of 2022

Md. Husnain Akhtar @ Md. Husnain S/o Md. Naseer Ansari @ Naseer Ahmad Ansari, Resident of Mohalla-Nimiya Tekari, Akbarpur, P.O. and P.S. and District-Rohtas.

... .. Appellant/s

Versus

Mussarat Jahan, W/o Md. Husnain Akhtar @ Md. Husnain, daughter of Md. Hanif Ansari, Resident of Mohalla-Mimiya Tekari, Akbarpur, P.O. and P.S. and District-Rohtas. At present address-D/o Md. Hanif Ansari, R/v-Mitarpur Sonpur, P.O.-Amba, P.S.-Kutumba.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Chandra Mohan Jha, Advocate
For the Respondent/s	:	Mr. Uma Kant Mishra, Advocate Mr. Satish Chandra Mishra, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
And
HONOURABLE MR. JUSTICE S. B. PD. SINGH
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE S. B. PD. SINGH)

Date : 30-06-2025

Heard the parties.

2. The present appeal has been filed under Section 19(1) of the Family Court Act, 1984 impugning the judgment dated 14.07.2022 passed by learned Principal Judge, Family Court, Rohtas in Matrimonial Case No. 236 of 2018 filed under Section 281 of the Muslim Law whereby learned Family Court has rejected the matrimonial



suit filed on behalf of the appellant-husband for restitution of conjugal rights with the respondent-wife.

3. The case of the appellant as per petition filed before the Family Court is that the appellant married with the respondent in the year 2010 as per Muslim rites and rituals and out of the wedlock, two male-child were born. The respondent-wife used to go to her parental house and appellant also, sometimes, used to visit his *Sasural*. Suddenly, on 24.09.2017, the family members of respondent-wife came and they took the respondent-wife with them along with jewellery and other valuable articles. The appellant-husband made all his efforts to take the respondent-wife from her parental house to her matrimonial house, but all his efforts went in vein. Ultimately, the appellant has filed the present Matrimonial Case No. 236 of 2018 for restitution of conjugal rights.

4. In response to the summon/notice issued by the Court, respondent-wife appeared and filed her reply/written statement.

5. In her written statement/reply dated 03.11.2018, the respondent-wife has stated that most of the facts and



allegations stated in the aforesaid petition are false and baseless and the case is not maintainable in the eye of law or on the basis of facts. The respondent-wife has stated that she married with the appellant-husband on 13.01.2010. In the marriage, her father spent Rs. 2 lakhs for purchase of articles and also gave Rs. 1.5 lakhs cash as dowry to the appellant-husband. After marriage, the appellant and other in-laws family members started torturing and assaulting the respondent for non-fulfillment of dowry demand of Rs. 2 lakhs. The family members of the respondent-wife also borne all the expenses at the time of delivery of both the children and appellant-husband did not spent a pie on delivery of both the children. Ultimately, a *Panchayati* was held where the appellant's side agreed to keep the respondent-wife with dignity and honour but again she was subjected to torture for non-fulfillment of dowry demand. The appellant-husband works as Fitter in the State of Chhatisgarh and does not provide any financial support to the respondent-wife or her children. Hence, Complaint Case No. 845 of 2018 was filed by the respondent-wife against the appellant and other family members which is



still pending before learned Chief Judicial Magistrate, Aurangabad.

6. After conclusion of the trial, the learned Principal Judge, Family Court has held that appellant has not established his claim. Accordingly, the Trial Court came to the conclusion that the appellant was not entitled for any relief filed under Section 281 of the Muslim Law and the suit was accordingly dismissed.

7. Thereafter, being aggrieved and dissatisfied with the aforesaid judgment and decree passed by the learned Family Court, the present appeal has been filed by the appellant.

8. Learned counsel appearing on behalf of the appellant has submitted that the judgment and decree passed by the learned Court below is bad and appears to be mechanically passed without application of judicious mind. The Family Court has failed to appreciate the fact that on 23.09.2017, the respondent-wife had left her matrimonial house and till then she has been residing at her parental house. The appellant-husband spent money on the expenses incurred on his wife and children. The appellant-husband



has made all his efforts to reconcile the matter with the respondent-wife but she is reluctant to join the matrimonial obligation with the appellant. Ultimately, the appellant-husband has filed the present petition for restitution of conjugal rights which was straight away dismissed by the learned Principal Judge, Family Court, Patna.

9. *Per contra*, learned counsel appearing on behalf of the respondent-wife has submitted that the impugned judgment and decree is just legal and in accordance with law. The learned Trial Court has rightly appreciated the evidence adduced on behalf of both the parties in the right perspective and has correctly dismissed the suit filed on behalf of the appellant-husband.

10. In view of the rival contentions, evidences and the arguments adduced on behalf of both the parties, the main points for determination in this appeal are as follows:-

(i) Whether the appellant is entitled to the relief sought for in his petition/appeal.

(ii) Whether the impugned judgment of Principal Judge, Family Court, is just, proper and sustainable/tenable in the eyes of law.



11. During the course of trial, altogether three witnesses have been examined on behalf of the appellant which are P.W. 1 Nasir Ansari (father of the appellant), P.W. 2 Md. Hasnain Akhtar @ Md. Hasnain (appellant himself) and P.W. 3 Gulshan Aara (mother of the appellant). From perusal of evidence of P.W. 2 (appellant), it clearly transpires that he has supported the facts as pleaded by him in the plaint. No vital contradiction has come during the course of his cross-examination. P.W.s 1 and 3 are father and mother of the appellant who have corroborated and reiterated the same facts what has been deposed by the appellant during trial.

12. From perusal of the case record of the Trial Court, it appears that respondent-wife has appeared and filed her written-statement, but to prove the contents of her written-statement and to controvert the allegation of appellant, neither any oral nor documentary evidence has been adduced on behalf of the respondent-wife. So, without any evidence, the pleadings have no evidentiary value because the pleadings are not considered as proof of any fact. Therefore, virtually there is nothing on record to



disbelieve and discard the evidence of the appellant adduced by him in this regard.

13. The Principles of Mahomedan Law clearly defines the suit for restitution of conjugal rights which reads as under:-

“281. Suit for restitution of conjugal rights (1) Where a wife without lawful cause ceases to cohabit with her husband, the husband may sue the wife for restitution of conjugal rights.

14. Considering the facts aforesaid, it is clear that in the absence of any positive material evidence by the respondent-wife, we are bound to believe the averments and evidences adduced on behalf of the appellant-husband because it has not been rebutted or controverted by any relevant, reliable and cogent evidence.

15. Accordingly, the judgment and order dated 14.07.2022 passed by learned Principal Judge, Family Court, Rohtas in Matrimonial Case No. 236 of 2018 filed under Section 281 of the Muslim Law is hereby set aside and the suit for restitution of conjugal right filed by the



appellant is decreed.

16. The respondent-wife is directed to join her husband (appellant) within a period of three months from the date of passing of the order and if she fails to do so, legal consequences and presumption will follow against her.

17. Accordingly, M.A. No. 475 of 2022 stands allowed.

(S. B. Pd. Singh, J)

(P. B. Bajanthri, J)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	17/06/2025
Uploading Date	02/07/2025
Transmission Date	N/A

