



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 425 OF 1994

Vasant s/o Keshav Dunakhe
age 34 years, occ. Service
Clerk in M.S.E.B.
R/o Jalgaon

.. Appellant

versus

Mrs. Meera w/o Vasant Dunakhe
age 25 years, occ. Tailoring work
c/o Ganpatrao Savliram Dixit
Panghatti, Naya Mohalla
Barahanpur (Madhya Pradesh)

.. Respondent

Mr. S. V. Dixit, Advocate holding for Mr. V. J. Dixit, Advocate for the Appellant.

Mr. N. V. Dhake, Advocate holding for Mr. G. V. Wani, Advocate for the Respondent.

CORAM : R. M. JOSHI, J.

DATE : 20th FEBRUARY, 2025.

JUDGMENT :

1. This second appeal takes exception to the judgment and decree passed by the First Appellate Court in Civil Appeal No. 222/1990 whereby the petition for restitution of conjugal rights filed by the appellant/husband under Section 9 of the Hindu Marriage Act came to be dismissed by reversing the judgment and decree dated 01.10.1990 passed in Hindu Marriage Petition (HMP) No. 47/1989.

2. Parties are referred to as husband and wife for the sake of convenience.

3. The marriage between the parties was solemnised in May 1985. As per the case of husband, wife was insisting for residing separately and was not prepared to stay with husband's family. It is his contention that for this reason the wife went to her parental home time and again and finally during the period of her pregnancy, she went to her parents house and after delivering a female child did not return to the matrimonial home. Husband further claims that he was maintaining his wife inspite of the fact that she was residing along with her parents and money orders were sent to that effect. Since the wife has left company of the husband without any reasonable cause, petition under Section 9 of Hindu Marriage Act came to be filed.

4. Wife filed written statement and denied the allegations/contentions of the husband. It is her contention that she never insisted for separate residence. It is alleged that on account of harassment caused by husband, she was forced to leave the matrimonial home.

5. Before the Trial Court, oral as well as documentary evidence was led by both the parties. Trial Court, by judgment dated 01.10.1990, allowed the petition and wife was directed to resume cohabitation with the husband. Being aggrieved by the said judgment, appeal came to be preferred being Civil Appeal No. 222/1990. Learned First Appellate Court reversed the findings recorded by the Trial Court and held that on account of harassment caused to her, wife left the matrimonial home and as such husband is not entitled for decree/order of restitution of conjugal rights.

6. Learned counsel for husband submits that the Trial Court has rightly taken into consideration the evidence on record and passed decree. He has drawn attention of the Court to the findings recorded by the First Appellate Court. It is submitted that the First Appellate Court has failed to take into consideration the documentary evidence i.e. Exhibit 31 dated 11.03.1986 sent by wife to husband wherein it is categorically stated that the husband must look for separate residential premises for them. It is his submission that though allegation of harassment is made against the husband, there is absolutely no corroborative evidence.

7. On the other hand, learned counsel for wife has drawn attention of the Court to the cross-examination of wife conducted on behalf of the husband which according to him, clearly indicates that on account of harassment/beating at the hands of husband, the wife has left the matrimonial home. It is his submission that in exercise of jurisdiction under Section 100 of Code of Civil Procedure, findings of fact recorded by the First Appellate Court being not perverse cannot be interfered.

8. Parties got married in the year 1985. In the year 1986, a daughter is begotten from the said wedlock. Though wife is said to have frequently visited parents house however, she did not leave company of husband. Though there is evidence in the form of letter dated 11.03.1986 where there is reference of wife enquiring husband about getting separate premises, however, nothing is reflected therefrom to the effect that unless husband gets such premises she will not resume cohabitation. On the other hand, cross examination conducted on behalf of the husband clearly shows that the wife was residing at matrimonial home. It has specifically come in the cross examination of the wife that in Diwali of 1988, she along with

husband went to her parental home and she stayed there for one day. After they came back, husband had beaten her and thereafter she was forced to leave matrimonial home. Thus, from suggestions made to the wife during her cross examination, the evidence of her harassment is brought on record.

9. It is open for the First Appellate Court to re-appreciate the evidence led before Trial Court and record fresh findings on fact. The First Appellate Court has accepted evidence of wife in order to hold that she was in a position to prove harassment caused to her. Having regard to the fact that evidence of harassment has come during the cross examination of wife, this Court finds no perversity in the findings recorded by the First Appellate Court. For want of any perversity in the findings recorded by the First Appellate Court, this Court finds no substantial question of law involved in this appeal. Hence, appeal stands dismissed.

10. Pending application if any, does not survive and stands disposed of.

(R. M. JOSHI)
Judge

dyb