



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.417 OF 1995
WITH
CIVIL APPLICATION NO.13072 OF 2015

1] Suhas Vishnu Yadkikar
Age-58 years, Occupation-Service,
R/o. Saraswati Housing Society,
Tq.Shrirampur,
District Ahmednagar. ..Appellant

VERSUS

1] Madhuri Suhas Yadkikar
Age-57 years, Occupation-Service,
R/o. Chapner Chawl,Shrirampur,
Tq.Shrirampur,
District Ahmednagar. ...Respondent

Advocate for Appellant : Mr.Sanket S.Kulkarni h/f. Mr.S.D.Kulkarni
Advocate for Respondent : Mr.V.S.Bedre

CORAM : SHAILESH P. BRAHME, J.

RESERVED ON : 25th JUNE 2025

PRONOUNED ON : 02nd JULY 2025

FINAL ORDER :

1. Heard both sides.
2. This appeal has brought a matrimonial dispute to the fore.
Appellant's H.M.P No.18 of 1991 for restitution of conjugal rights under

Section 9 of Hindu Marriage Act,1955 (hereinafter referred to as 'Act' for the sake of brevity and convenience) was decreed by the trial court on 05.08.1993, which is reversed by appellate court vide judgment and decree dated 21.07.1995 in R.C.A No.301 of 1993.

3. Parties were married on 01.01.1989 and they have a son who is staying with the respondent. They co-habited up to 01.07.1990. Appellant filed petition under Section 9 of the Act contending that without any reasonable cause, respondent withdrew from his company. During co-habitation she was arrogant. She was insisting for staying separately from the appellant's parents. She did not permit his parents to meet son.

4. Respondent contested the petition by denying all the allegations to make out reasonable excuse to withdraw from the company of the appellant. It was contended that appellant and his parents caused ill-treatment to her. They wanted her money as she was in service. She was treated like a maid servant. She was being beaten. She was mentally and physically harassed by appellant and his parents. She was required to go to her office on her foot which is 2.5 kms away. She had to keep son with her parents which was near to her bank. She was being abused, assaulted on 02.07.1990 and she was constrained to leave matrimonial home. It is further contended

that appellant did not make any provision for her and son's maintenance.

5. On the basis of oral evidence of two witnesses of the appellant and oral evidence of the respondent herself, trial court passed decree of Restitution of conjugal rights. It was held that no reasonable excuse was shown by the respondent for withdrawing from the company of the appellant. Being aggrieved, she filed regular appeal which was allowed and decree passed by the trial court was reversed.

6. Second appeal was admitted on following substantial question of law :

“Whether the Learned Judge of the lower appellate court was justified in framing Issue No.1, in view of the specific provision of Section 9 of Hindu Marriage Act?”

7. Learned counsel Mr.Kulkarni appearing for the appellant canvassed that point no.1 framed by lower appellate court is in utter disregard of Section 9 of the Act. A burden is wrongly cast on the appellant. It is submitted that there is absolutely no evidence on record to corroborate theory of ill-treatment and assault of the respondent. Respondent did not file any complaint or approach any forum against the ill-treatment. It is contended that judgment and decree passed by lower appellate court is based on conjecture and

surmises. It is further contended that appellate court has not assigned reason to substitute the findings recorded by the trial court which had occasion to examine demeanour of witnesses. It is submitted that petty bickerings in the matrimonial life would not be the cause to withdraw from the company. The approach of the appellate court is lopsided and needs interference.

8. Mr.Bedre, Advocate for the respondent supports judgment and decree passed by the appellate court. It is contended that respondent is an educated lady, having service in Bank. He would submit that lower appellate court has properly considered the facts in issue and no prejudice would be caused to the appellant by formulating the points for determination. The compelling circumstances of the respondent for keeping her tender son with her parents who were residing near by the workplace, has been rightly appreciated. It is contended that lower appellate court has assigned plausible and elaborate reasons commenting on the conduct of appellant and father-in-law. My attention is adverted to the cross-examination of P.W-1 to show his attitude.

9. I have considered rival submissions of the parties. I have gone through the judgment and decree passed by both the courts below as well as relevant record. Since 02.07.1990, parties are residing

separately. Respondent is educated and a working woman. Her problems need to be looked at from different angle and with compassion which is lost sight of by the trial court.

10. I have gone through points for determination framed by lower appellate court. In paragraph Nos.15 and 16 by referring to the judgments of Bombay High Court, Delhi High Court and Kerala High Court, appellate court has rightly understood the purport of section 9 of the act and the explanation in Section 9(2) of the act. In paragraph No.17 of the impugned judgment of the lower appellate court, casting of the burden is rightly appreciated. The facts in issue involved in the matter have been dealt with by lower appellate court in the context of the judgments. I do not find that any prejudice is caused by formulating points for determination. Therefore, I find no merit in the substantial question of law formulated in the second appeal.

11. The oral evidence of the parties is rightly dealt with by the lower appellate court. Trial court has the opportunity to observe conduct of the witnesses and normally lower appellate court should be slow in interfering with the findings based on depositions of witnesses. In the present matter, learned counsel for the appellant did not point out a particular demeanour of the parties or witnesses which is noticed by the trial court and which has been ignored by lower appellate court. It

is open for the lower appellate court to re-appreciate the evidence. Therefore, I find no fault in reversing the decree passed by the trial court.

12. I have carefully gone through the observations recorded in paragraph Nos.20 and 21 of lower appellate court which are being castigated as conjecture and surmises. Appellant failed to make out any case of arrogant and rudely behaviour of the respondent immediately after marriage and in those context it has been observed that there is no possibility of such a misconduct immediately after marriage. Similarly, the incident of 02.09.1990 narrated by P.W-2 is doubtful for want of corroboration by appellant himself. The inference drawn from the deposition of P.W-2 is plausible and can not be discarded.

13. There is a considerable force in the case of the respondent that due to compelling circumstances which would amount to reasonable excuse, she was constrained to withdraw from matrimony. The preponderance of probabilities would be in favour of the respondent. She has successfully discharged burden on her as contemplated by explanation of Section 9(2) of the act. The following circumstances would cause reasonable excuse for her to stay separately :

a) Respondent was working in Urban Co-operative Bank. Her

salary was being utilized to repay the debts of appellant's family.

b) No provision was made by the appellant to provide vehicle for her to commute the office.

c) She was being assaulted and abused on 02.07.1990.

d) She had apprehension from her father-in-law. The cross-examination of the appellant shows his attitude of recklessness in not protecting the respondent.

e) Her suckling son was required to be kept at her parent's home which was near to her workplace as there was nobody in the family of the appellant to look after his son.

f) She was required to take loan to repay the debts.

g) She was abused, beaten and virtually driven out on 02.07.1990.

14. I am of the considered view that lower appellate court has properly appreciated the material on record keeping in mind that respondent faced peculiar problems of working woman who had absolutely no co-operation of the appellant and his parents. Just because the respondent did not approach police or Court of law seeking any relief does not mean that she was having all comforts while co-habiting with the appellant. In all probabilities when there was

nobody to look after her except her aged parents, she was right in not taking any extreme steps to end relationships.

15. Considering overall circumstances and as the parties are separated for last 35 years, practically any decree of restitution of conjugal right would be otiose. For the reasons stated above, I find no merit in the Second Appeal.

16. Second Appeal is dismissed. Civil application also stands disposed of.

17. There shall be no order as to costs.

[SHAILESH P. BRAHME, J.]

vsj