



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

WRIT PETITION NO. 7461 OF 2025

Mrs Neha W/o Rajnesh Naidu (Joshi),  
Aged about 42 years, Occ. Interior Designer,  
R/o 201, Prashant Sahniwas, Plot No.1 A,  
Prashant Nagar, Ajni, Nagpur-440015

.... Petitioner.

vs.

Rajnesh S/o Rajendrapal Naidu,  
Aged about 57 years, Occ. Consultant,  
R/o 8A, Karve Nagar, Nagpur – 440025;  
presently R/o 1, Mecosabagh, Nagpur – 440014

.... Respondent.

Shri A. V. Pande, Advocate for petitioner.  
Shri Rajnish R. Naidu, respondent in person.

CORAM : ANIL S. KILOR AND RAJ D. WAKODE, JJ.  
DATE : 26<sup>th</sup> March, 2026.

ORAL JUDGMENT : (Per : Raj D. Wakode, J.)

Heard Shri A. V. Pande, learned counsel for the petitioner  
and Shri Rajnish R. Naidu, sole respondent in person.

2. **Rule.** Rule made returnable forthwith. Heard finally with  
the consent of learned counsel for the petitioner so also the respondent  
in person.

3. The petitioner wife has approached this Court seeking  
challenge to the impugned order dated 11/08/2025 passed by the

learned Family Court No.3, Nagpur below Exhibit-75 in Petition A-1043/2018. The aforesaid application below Exhibit-75 was filed by the petitioner (original respondent) under Order VII Rule 11(a) and (d) of the Code of Civil Procedure, 1908 for rejection of plaint.

4. Brief facts leading to the present writ petition are as follows:

The petitioner and the respondent are husband and wife and their marriage was solemnized on 18/12/2011 at Nagpur. Out of the said wedlock, they were blessed with a child on 10/01/2023 and named him as Master Yunay. However, due to unfortunate circumstances and matrimonial discord, the parties have separated since 20/08/2013.

5. Shri A. V. Pande, learned counsel for the petitioner submits that after the petitioner-wife was constrained to flee from her matrimonial home on 20/08/2013, she filed Petition No.E-443/2013 before the Family Court Nagpur on 01/09/2013. In the aforesaid petition, Interim Application No.688/2013 below Exhibit-6 for grant of interim maintenance and Interim Application No.9/2013 below Exhibit-7 for grant of alternate accommodation or monetary relief towards the same were filed by the petitioner. Shri Pande, submits that it is a matter of record that the aforesaid applications were allowed by the learned Family Court vide order dated 24/08/2015 on Exhibit-6 and

15/07/2017 on Exhibit-7. The learned Family Court vide order dated 24/08/2015 below Exhibit-6 has awarded the interim maintenance of Rs.5,000/- per month from 01/09/2013 to 31/08/2015 and thereafter Rs.10,000/- per month for the minor child and Rs.15,000/- per month from 01/09/2013 for the petitioner. The learned Family Court vide order dated 15/07/2017 below Exhibit-7 directed the respondent herein (husband) to provide an alternate accommodation to the petitioner failing which the respondent was directed to pay Rs.25,000/- per month to the petitioner.

It is submitted that being aggrieved by the aforesaid order dated 24/08/2015 awarding interim maintenance, the respondent herein challenged the same before this Court vide Criminal Writ Petition No.875/2015 which came to be dismissed vide judgment dated 14/08/2018. Being further dissatisfied, the respondent herein preferred Criminal Appeal No.730/2020 before the Hon'ble Apex Court laying challenge to the aforesaid judgment dated 14/08/2018. The aforesaid Criminal Appeal No.730/2020 came to be decided vide judgment dated 04/11/2020. As such, the award of interim maintenance by the Family Court, Nagpur was upheld by all superior Courts.

6. The fact remains that the present respondent had opposed the

aforesaid applications for interim maintenance and challenged the orders passed thereon upto the Honouuble Supreme Court of India and did not comply the said orders passed in 2015 and 2017. The learned counsel for the petitioner has invited our attention to paragraph 4 of the application below Exhibit-75 filed on 31/05/2025 which at record page 29, Annexure-B which reads thus :

*“4. Significantly, the respondent was constrained to file the following execution petitions which have been either disposed of or are pending before this Hon’ble Court :*

- (i) PETITION: ER-276/2015;
- (ii) PETITION: ER-189/2018
- (iii) PETITION: ER-159/2019;;
- (iv) PETITION: ER-160/2019;
- (v) PETITION: ER-169/2021;
- (vi) PETITION: ER-170/2021;
- (vii) PETITION: ER-207/2022;
- (viii) PETITION: ER-208/2022
- (ix) PETITION: ER-209/2022;
- (x) PETITION: ER-145/2023;
- (xi) PETITION: ER-146/2023;
- (xii) PETITION: ER-327/2023; and
- (xiii) PETITION: ER-313/2024;

7. Perusal of aforesaid applications which were required to be filed by the petitioner and her son for recovery of maintenance from 2015 to

2024 reveals non-compliance of the orders of maintenance by the respondent husband. The learned counsel for the petitioner submits that on account of such conduct of the respondent, the petitioner was constrained to prefer Contempt Petition (Civil) No.364/2021 before the Hon'ble Apex Court which is pending adjudication till date. The Hon'ble Apex Court in the said matter has passed several orders from time to time directing the respondent herein to issue particular payments. As such, vide order dated 25/11/2024 the Hon'ble Apex Court directed the respondent herein to pay an amount of Rs.2,50,000/- within three months of passing the said order.

8. The respondent husband has filed petition for restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955. The said petition is pending before the learned Family Court. The petitioner wife on 31/05/2025 had filed the aforesaid application below Exhibit-75 for rejection of the petition under Order 7 Rule 11(a) and (d) of the Code of Civil Procedure. The contention of the wife, respondent therein was that the petition was liable to be rejected on the ground of non-disclosure of cause of action and the petition is barred by law in view of the ratio laid down by the Hon'ble High Court in Criminal Revision Application No.70/2012 (*Sushma Manojkumar*

*Shriwastav vs. Manojkumar Shriwastav and anr.*). The aforesaid application came to be rejected by the learned Family Court on 11/08/2025 against which the petitioner has approached this Court.

9. The petitioner had filed application below Exhibit-75 on a specific ground that the Bombay High Court in case of *Sushma* (supra) has laid down the ratio that the husband who desires the company of his wife must fulfill the condition that he himself is ready and willing to discharge his marital obligation, which includes the duty to maintain his wife by keeping his own demands/prayers in his petition the relevant para of the aforesaid judgment dated 11/04/2022 passed in Criminal Revision Application No.70/2012 reads thus :

*“16. It may be mentioned that in every petition of the husband whether he demands the company of the wife in a Petition of Restitution of Conjugal Rights or whether he demands his own freedom from his wife in a Petition for Divorce, the condition precedent for the grant of the reliefs must be that he is himself ready and willing to discharge his marital obligations which includes the duty to maintain his wife in keeping with his own demands/prayers in his petition. The husband must, therefore, show his own offer to demonstrate how he wants to perform his part of the marriage contract. A husband driving his wife to file an application for her maintenance is in itself inconsistent with his own marital obligations, let alone the husband challenging and defending such application. No husband who fails to maintain his wife can have the*

*right to demand his conjugal rights. The husband himself first show that he is capable of maintaining and then demand her company.”*

10. Perusal of above paragraph reveals that this Court has in unequivocal terms has held that in every petition of the husband where he demands company of wife for restitution of conjugal rights, the condition precedent for grant of relief must be that he is himself ready and willing to discharge his marital obligations which includes the duty to maintain his wife in keeping his own demands/prayers made in his petition. The husband driving his wife to file an application for her own maintenance is in itself inconsistent with his own marital obligations, let alone the husband challenging and defending such application. No husband who fails to maintain his wife can have the right to demand his conjugal rights.

11. Thus, in view of such clear law laid down by the Bombay High Court, Shri Pande, learned counsel submits that the application below Exhibit-75 deserves to be allowed as the proceedings under challenge were barred by the ratio laid down in case of *Sushma* (supra).

12. Per contra, the respondent husband who appears in person submitted that he had specifically pleaded in his petition, particularly in

paragraphs 8 and 10 that he is willing to maintain his wife and child and this is sufficient to comply with the aforesaid burden of discharge of marital obligation. The learned Family Court, after hearing both the parties has rejected the aforesaid application recording reasons in the impugned order. The learned Family Court has observed that during pendency of the said petition, all the recovery petitions filed by the wife were disposed of by the said Court as the husband has paid all the arrears of maintenance and arrears of rent in lieu of shared household and thus, nonpayment of interim maintenance would not be the ground to reject the petition for restitution of conjugal rights and the petitioner-husband has cleared all the maintenance due to the respondent therein wife. It is solely for this reason, the Family Court has rejected the application filed by the wife for rejection of plaint.

13. The fact remains that ER petitions filed by the petitioner-wife were disposed of after necessary compliance on 05/03/2025. The petition for restitution of conjugal rights under Section 9 of the Hindu Marriage Act was filed by the husband in August 2018. The application for rejection of plaint, in view of the settled law of the Hon'ble Supreme Court of India in *Dahiben vs. Arvindbhai Kalyanji Bhanusali (Gajra) Dead Thr. LRs and ors. (2020) 7 SCC 366* has to be

decided on the basis of pleadings that were made at the time of filing of the petition. Thus, in our considered view, the learned Family Court has not dealt with the grounds raised in the application below Exhibit-75 in proper perspective and more specifically after proper appreciation of the law settled by this Court in case of *Sushma* (supra). The learned Family court while rejecting the aforesaid application has also not recorded any reason as to non-disclosure of cause of action as it was also one of the ground raised for rejection of plaint by the petitioner.

14. In view of the above, we pass the following order :

- (a) The impugned order dated 11/08/2025 passed by the learned Family Court-3, Nagpur below Exhibit-75 in Petition No.A-1043/2018 is hereby quashed and set aside.
- (b) The learned Family Court is directed to decide the aforesaid application below Exhibit-75 filed by the petitioner for rejection of petition under Order 7 Rule 11(a) and (d) of the Code of Civil Procedure, 1908 afresh in accordance with law and more specifically after considering the judgment of this Court in Criminal Revision Application No.70/2012 (*Shushma Manojkumar Shriwastav vs. Manojkumar Shriwastav and anr.*).
- (c) The learned Family Court is directed to decide the aforesaid application after hearing both the parties within a period of four weeks from the date of production of this order.

Writ Petition is partly allowed in aforesaid terms. Rule accordingly. No order as to costs.

(Raj D. Wakode, J.)

(Anil S. Kilor, J.)