

MHNS070018272022



Received on 06.10.2022

Registered on 07.10.2022

Decided on 27.11.2023

Duration Y M D

01 01 21

IN THE COURT OF THE DISTRICT JUDGE - 2, MALEGAON,
AT – MALEGAON, DIST. NASHIK.

(PRESIDED OVER BY S. B. BAHALKAR)

MARRIAGE PETITION NO. 3/2022

EXH. 12

Prashant Chandramohan Wagh

Age : 35 yrs., Occu. : Labour

R/o. Rajaram Patil Chawl,

Camp No.2, Manmad,

Tal. Nandgaon, Dist. Nashik.

.. Petitioner

Vs.

Sonal Prashant Wagh

Age – 28 years. Occu. Housewife.

R/o. C/o. Yosef Haribhau Jadhav,

Burhan Nagar, Ahmednagar,

Dist. Ahmednagar.

.. Respondent

Shri. S.V. More, Learned Advocate for the Petitioner.
Respondent - Ex-parte.

J U D G M E N T
(Delivered on 27.11.2023)

[1] This is the petition filed for restitution of conjugal rights, under section 32 of the Divorce Act.

Brief facts of the case are as under :-

[2] Petitioner is the husband of respondent. Their marriage was performed on 17.10.2019 as per the Christian Customs and Rituals at Ahemadnagar. Their marriage tie is still in existence.

[3] It is contended by the petitioner that after the marriage, the respondent came to his house for cohabitation. At that time, the respondent, the petitioner and his parents along-with younger brother were residing jointly. For the initial period of 3 to 4 months, their married life was going on happily. However, thereafter the respondent started to insist the petitioner to reside separately from their joint family. At that time, the petitioner told the respondent that he has to discharge his responsibilities towards his parents and brother. Hence, he showed his inability to reside separately. Therefore, the

respondent got angry and since then, she started not to perform household work. She was not behaving and listening his parents properly. She used to give insulting treatment to his parents. However, they were tolerating her misbehaviour with a hope that the day will come and everything will be fine. But, there was no change in her behaviour. She used to raise quarrel with the parents of the petitioner for minor reasons and frequently, used to go to her maternal house.

[4] It is further contended by the petitioner that about one & half years, prior to filing of this petition, the respondent raised quarrel with him and his parents and left his house without reasonable excuse and went to her maternal house. Since then she is residing there. The petitioner many times went to fetch her. However, every time she refused to come with him for cohabitation and asked him to reside separately from his joint family, otherwise she will not come for cohabitation and she also asked him for divorce.

[5] Thus, according to the petitioner, the respondent has without reasonable excuse withdrawn from his society. This constrained him to file present petitioner for restitution of conjugal rights. Therefore, he lastly prayed that decree of restitution of conjugal rights may be passed in his favour.

[6] Notice of this petition was sent to the respondent by R.P.A.D. However, the respondent refused to accept the said notice. Therefore, the envelope containing the notice (Exh.7) returned to this Court with an endorsement "Refused". It is well settled that refusal to accept such notice, is good service of notice. Thus, inspite of service of notice, the respondent failed to appear in this matter. Hence, the petition proceeded ex-parte against her.

[7] Following points arise for my determination. I have recorded my findings thereon for the reasons stated below. :-

Sr. No.	Points	Findings
1	Whether the petitioner proves that the respondent has without reasonable excuse withdrawn herself from his society ?	In the affirmative
2	Is there any legal ground for which the petition should not be granted ?	In the negative
3	Whether the petitioner is entitled for decree of restitution of conjugal rights ?	In the affirmative
4	What order ?	Petition is allowed.

REASONS

Point Nos. 1 and 2 :-

[8] Petitioner has filed his affidavit (Exh.10). He has reiterated almost all the contentions raised in the petition. Sum and substance of his affidavit is that his marriage with the respondent was performed on 17.10.2019 as per the Christian Customs and Rituals at Ahemadnagar and their marriage tie is still in existence.

[9] The petitioner further states that after the marriage, the respondent came to his house for cohabitation. At that time, the respondent, he and his parents along-with his younger brother were residing jointly. For the initial period of 3 to 4 months, their married life was going on happily. However, thereafter the respondent started to insist him to reside separately from their joint family. At that time, he told the respondent that he has to discharge his responsibilities towards his parents and brother. Hence, he showed his inability to reside separately. Therefore, the respondent got angry and since then, she started not to perform household work. She was not behaving and listening his parents properly. She used to give insulting treatment to his parents. However, they were tolerating her misbehaviour with a hope that the day will come and everything will be fine. But, there was no change in her

behaviour. She used to raise quarrel with his parents for minor reasons and frequently, used to go to her maternal house.

[10] The petitioner further states that about one & half years, prior to filing of this petition, the respondent raised quarrel with him and his parents and left his house without reasonable excuse and went to her maternal house. Since then she is residing there. He many times went to fetch her. However, every time she refused to come with him for cohabitation and asked him to reside separately from his joint family, otherwise she will not come for cohabitation and she also asked him for divorce. Thus, according to him, the respondent has without reasonable excuse withdrawn from his society. Therefore, he lastly prayed that decree of restitution of conjugal rights may be passed in his favour.

[11] The above evidence of the petitioner adduced on oath has gone unchallenged. Therefore, I find no reason to disbelieve the same. Moreover, from the facts and circumstances of the case, I am satisfied that the statements made by the petitioner in his affidavit are true and there is no legal ground why the petition should not be granted. Thus, according to me, there is no legal impediment to pass decree of restitution of conjugal rights as prayed for. I, therefore, answer Point No.1 in the affirmative and Point No.2 in the negative.

Point Nos.3 and 4 :-

[12] As mentioned above the petitioner has proved that the respondent without reasonable excuse has withdrawn him from the society and there is no legal ground for refusing to pass decree of restitution of conjugal rights. I, therefore, hold that the petitioner is entitled for decree of restitution of conjugal rights. In the result, the petition deserves to be allowed. In the peculiar circumstances of the case, I am of the opinion that it would be just and proper to order the petitioner to bear his own costs of the petition. I, therefore, answer Point No.3 in the affirmative and in answer to Point No.4 pass the following order :-

ORDER

[1] Petition is hereby allowed.

[2] It is hereby ordered that the respondent shall go to the house of the petitioner for cohabitation, within **one month from the date of this order.**

[3] The petitioner shall bear his own costs of the petition.

[4] Decree be drawn accordingly.

Sd/-xx

(S.B. Bahalkar)

Dated: 27.11.2023

District Judge-2, Malegaon.

MHNS070018272022



Presented on : 06.10.2022
Registered on : 07.10.2022
Decided on : 27.11.2023
Duration : Y M D
01 01 21

Visit ecourts.gov.in for updates or download mobile app “eCourts Services” from Android or iOS