

**HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT  
AT JABALPUR**

**First Appeal No. 947/2015**

**Hemant Rawat**

**Vs.**

**Smt. Anubha Rawat**

**Present : Hon'ble Shri Justice S.K.Gangele, Judge  
Hon'ble Smt. Justice Anjuli Palo, Judge**

---

Appellant present in person.  
Shri Tabrez Sheikh, counsel for the respondent

---

Whether approved for reporting : **Yes**

---

**Law laid down :-** Husband has failed to establish any reasonable excuse for withdrawal from the society of wife. He is under obligation to live with his wife in his home and under his roof.

---

**Significant Paragraphs : - 19 to 20, 21 & 24.**

---

**JUDGMENT  
(19.04.2018)**

**Per : Smt. Anjuli Palo, J :-**

This first appeal has been filed by the appellant/husband under Section 19 of the Family Courts Act, 1984 being aggrieved by the judgment and decree dated 10.09.2015 passed by the First Additional Principal Judge, Family Court, Bhopal under Section 9 of the Hindu Marriage Act, 1955 whereby the decree of restitution of conjugal rights

has been granted in favour of the respondent/wife.

2. It is not disputed that, the appellant and respondent are husband and wife. Their marriage was solemnized on 14.04.2003 at Ratlam. They were living together only for 3½ months.

3. The wife-respondent had filed a petition under Section 9 of the Hindu Marriage Act against the appellant/husband for restitution of conjugal rights on the ground that her family members gave cash amount and other gifts on their marriage. Four days after the marriage, they went to Shimla and enjoyed their company. After that the respondent went to her parent's house at Bhopal. She resided there till 20.05.2003. Thereafter, she returned back to Ratlam. On 12.07.2003, she again went to Bhopal to celebrate first *sawan* at her paternal house. Then again she returned to Ratlam and became pregnant. For delivery of her child, she came to Bhopal on 11.11.2003 and gave birth to a son on 28.12.2003. The medical expenses of operation was borne by her family members. Even after getting information, the appellant did not come to Bhopal.

4. The wife further alleged that the appellant was not satisfied with the dowry. He demanded Activa Scooter and Rs.

2 lakhs as dowry and due to non-fulfillment of his demand, he annoyed with the respondent and her family members. He visited Bhopal lastly in the summer 2003 and thereafter he totally neglected his wife and son. They depended on the widow mother of the respondent. The respondent was willing to reside with the appellant but the appellant was not willing to take them with him. Therefore, the respondent wife filed a petition for restitution of conjugal rights against him.

5. Appellant denied all the allegations made against him and pleaded that he himself purchased an Activa Scooter and he gave Rs. 35,000/- to his wife for it. On 12.05.2003 the respondent informed about her pregnancy to him. She wanted to abort it. The appellant stopped her. On 16.07.2003 the respondent went to Bhopal with her brother. She was not inclined to deliver her child at Ratlam. Hence, the appellant gave her Rs.15,000/- and again he gave Rs. 8000/- to her. On 28.12.2003 a son was born but the respondent did not inform him. He reached Bhopal on 29.12.2003. He stayed there up to 31.12.2003. Even then the respondent filed a petition for maintenance against him. She compelled him to reside separately from his parents. He is not ready for it. Therefore, the respondent falsely made allegations against him. As her own will she resided separately in her parental house. She destroyed married life of the appellant without any proper reason. Therefore, as per the appellant, respondent is not

entitled for getting decree under Section 9 of Hindu Marriage Act.

6. The learned trial Court allowed the petition under Section 9 of Hindu Marriage Act in favour of the respondent/wife. It was held by the trial Court that, the appellant has willfully neglected his wife and son continuously for years. Therefore, it was directed that the appellant took his wife and accompanied her.

7. Against the aforesaid findings, the appellant filed this appeal on the grounds that the allegations of the respondents are false. The trial Court wrongly ignored the fact that the respondent herself left her matrimonial house in November, 2003. Application for restitution of conjugal rights has been filed after seven years. The trial Court wrongly held that on 28.12.2003, the respondent gave birth to the son of the appellant which is contrary to the statement of respondent herself. The respondent wanted to compel the appellant to live separately from his parents. Therefore, she lodged false complainant of dowry demand against him. The financial condition of respondent's family is not well. Hence, the marriage was solemnized at Ratlam and the expenses were borne by the appellant himself. The respondent is an educated postgraduate lady. She herself neglected her marital duties towards her husband. She refused to live with him. She also refused to have physical relation with the appellant at Shimla. On so many occasions the appellant tried to take respondent with him to Ratlam but the respondent was

not ready to accompany him therefore, the learned Trial Court wrongly held that she is entitled for a decree of restitution of conjugal rights against the appellant. On that ground the appellant prayed to set aside the aforesaid impugned judgment. The appellant further insisted to consider his application under Section 65-B of Indian Evidence Act.

8. Before us, the appellant himself argued his case at length and referred some case laws.

9. Learned counsel for the respondent opposed the contentions of the appellant and submitted that the trial Court rightly passed a decree under Section 9 of the Hindu Marriage Act in favour of the respondent and prays that the appeal deserves to be dismissed.

10. Perused the record.

11. It is not in dispute that the appellant and respondent are husband and wife. Their marriage was solemnised on 04.04.2003. On 28.12.2003, the respondent gave birth to his son at her parental house. The statement of the respondent that, the child born through cesarean operation is unchallenged in her cross-examination. Duration of pregnancy itself establish that the baby was conceived just after the marriage. In our opinion the allegation of the appellant that the respondent refused to have physical relationship with him is found unreliable.

12. It is also undisputed that the respondent went to her maternal house to celebrate *sawan puja* on 12.07.2003. The appellant had not challenged that as per the family tradition, the first child was to be born at maternal house of the respondent. As per the respondent, the appellant had not borne the medical expenses of her treatment. In this regard we find her evidence is unrebutted. The appellant had not filed any document or any bill to prove that all the expenses were paid by him. Such type of conduct itself indicates the nature of the appellant. He wants to save his money and shifted his burden to him inlaws. The respondent deposed that on 28.12.2003, they informed the appellant about birth of the child and his sister telephonically at night. The appellant came to Bhopal on the next day but he was annoyed with his brother-in-law that, they had not intimated him properly about the child birth. Thereafter, appellant returned back to Ratlam, then he never came at Bhopal to take his wife and child to Ratlam. On 10.07.2005, the respondent along with her elder sister, elder brother-in-law, younger sister and younger brother-in-law went to her matrimonial home but the parents of the appellant refused let her in. Respondent further stated that she tried to contact the appellant but appellant tried to avoid her. Relatives of the respondent on many occasions went to Ratlam to meet the appellant but he told them that he did not want to keep the respondent with him.

13. From the perusal of record, it is evident that no genuine efforts were made by the appellants to reconcile the matter between him and the respondent. The contention of the appellant raised before us clearly indicates that any how he is not ready to accompany his wife. He forcefully stated that the respondent and her family members are in fault. It seems that the appellant is adamant to leave his wife, due to his ego only. Because the respondent tried to contact him many times to reside with him and his parents.

14. The appellant filed written arguments of about 92 pages. If we summarise his conversation, it can be concluded in short that when the husband-wife resided together for 3½ months, the appellant came that respondent-wife always tortured him. In this regard, the appellant alleged that he gave the amount for purchasing activa-scooter to the respondent. It was purchased by respondent at Bhopal and then transferred from Bhopal to Ratlam. With regard to this allegation, we scrutinise the testimonies of both the parties, we find that the appellant falsely alleged that the scooter was purchase by him, because if he intended to purchase a scooter for his wife, he would have bought it at Ratlam itself rather than purchase it from Bhopal and then transferring it to Ratlam. Still the scooter is in his possession at Ratlam. The conduct of the appellant shows that he wants to suppress the fact that the aforesaid scooter was purchased by his in-laws and cost of the scooter was not paid by the appellant. We

are of the opinion that on the demand of appellant, the scooter was gifted to him by the family members of the respondent.

15. During the arguments, the appellant denied that their son was born from their wedlock. This denial is contrary to his Court statement. In our opinion, such type of conduct also impliedly shows that he raised baseless questions with regard to paternity of his own son to save himself from the liability to maintain his own child. This conduct of the appellant cannot be ignored which clearly establish that he is not interested to perform his duties among his wife and his son.

16. In case of **Geeta Bai (Smt.) Vs. Rajaram Lodhi [F.A.No. 155 of 1994]**, it was held that a plain reading of explanation of Section 9 of the Hindu Marriage Act, 1955 shows that for the purpose of grant of decree of restitution of conjugal rights, it has to be proved that the other side has withdrawn from the society and the withdrawal should be without reasonable cause.

17. In this regard, from the testimony of both the parties, we find that the appellant never attempted to provide shelter, maintenance charges or medical expenditure to his wife and son. In the open Court, the appellant tried to establish that his wife was not ready to go live with him as per his desire. This is not a sufficient ground to leave the wife and son. Every person has some good and



bad qualities. After marriage, it is essential that a person must accept both the qualities of his spouse. If one of them compels another, such type of dispute are bound to arise between husband and wife.

18. Appellant has prayed to accept his application under Section 65(b) of the Evidence Act to establish the conversation between him and the respondent recorded by him. It is important to mention here that the impugned judgment has been passed on 10.09.2015. The aforesaid conversation was recorded on 18.01.2004 and 03.11.2011. The transcription of the conversation is filed by the appellant with his application. After perusal of the aforesaid transcription, it appears that the appellant tactfully wants to implicate his wife for the defaults and on the other hand he tried to save himself. The conversation also indicate that the wife-respondent wants to ignore their past mistakes and is willing to live with the appellant-husband peacefully. But the appellant on the other hand is continuously trying to point out the earlier mistakes of the respondent and dwell in the past. Such type of conduct also shows that the appellant never willfully tried to understand his wife and solve their disputes amicably. In other words, it clearly indicates that he does not want to take responsibility of his wife and son and he himself wants to live separately from them.

19. Explanation of Hindu Marriage Act prescribes that -  
Where a question arise whether there has been reasonable excuse for

withdrawal from the society, the burden to prove reasonable excuse shall be on the person who has withdrawn from the society. Section 9 of the Hindu Marriage Act must be read with Section 23 of the Act which imposes on the Court the duty to enquire into and pass a decree inter alia for restitution of conjugal rights, after satisfying itself about certain matters, the petitioner must show that there is a bonafide desire to resume matrimonial cohabitation and to render the rights and duties of matrimonial rights.

20. It would seem that conduct of a spouse which for one reason or another falls short of cruelty or any other matrimonial offence, would afford reasonable excuse for leaving or withdrawing from the society of the spouse and be a defence to suit for restitution under the present section. Whether one party has reasonable excuse for leaving the other or staying apart, must depend on whether the conduct complained of is of a grave and weighty character. The plea that there was reasonable excuse for the respondent to withdraw from the society of the petitioner, must in substance involve an inquiry into facts. Each case must depend on its own facts and circumstances and it is not possible to give an exhaustive statement of what may or may not constitute 'reasonable excuse'. The above principles were accepted and relief under the present section was not granted to the petitioner on the ground that the other spouse had withdrawn from the society of the petitioner for a reasonable excuse. In the present

case, we do not find that the appellant has any reasonable excuse to withdraw from the society of the respondent.

21. Correspondence between the spouses is quite often relied upon in support of or in opposing the plea for restitution of conjugal rights. These facts have to be read bearing in mind the circumstances, the anxiety and mental condition of the spouse at the time and also the situation and the thoughts of the parties which occasioned the statements, complaints and at times, even allegations therein contained. Such correspondence between spouses may assume significance in view of assertions that may have been made, and the court can order that such correspondence be produced before it, in order to examine the veracity of the allegations contained in such correspondence.

22. In case of **Suman Singh vs. Sanjay Singh [(2017) 4 SCC 85]**, it was held that few isolated incidents of long past and that too found to have been condoned due to compromising behavior of the parties cannot constitute an act of cruelty within the meaning of Section 13 (1)(ia) of the Hindu Marriage Act because both the exchange some verbal conversation which would not be sufficient to constitute cruelty unless it is further supported by incident of like nature.

23. All the allegations of the appellant-husband and denial of the respondent-wife, likewise allegations of the respondent-wife and denial from the appellant-husband indicate that their dispute

can be resolved only with their sincere efforts. There are small issues between them after their marriage which needs to be addressed only by mutual understanding. It appears that the appellant's main grievance is that he was hurt by the behaviour of his inlaws. But we find no incident where the respondent-wife misbehaved with the appellant or her behaviour was cruel towards the appellant.

24. With regard to allegation of dowry demand, it is usually seen that in matrimonial disputes, where the parties were residing separately since long, they charge their spouse on false ground.

25. The Hon'ble Supreme Court in case of Suman Singh (supra) further held that if the evidence establish that it was the husband who withdrew from the wife's company without any reasonable cause, wife is entitled for decree of restitution of conjugal rights. In that case, the Supreme Court further expressed as under :

“We hope and trust that the parties would now realize their duties and obligations against each other as also would realize their joint obligations as mother and father towards their grown up daughters. Both should, therefore, give quite burial to their past deeds/acts and bitter experiences and start living together and see that their daughters are well settled in their respective lives. Such reunion, we feel, would be in the interest of all family members in the long run and will bring peace, harmony and happiness. We find that the respondent is working as a "Caretaker" in the Government Department (see Para 4 of his petition). He must, therefore, be the "Caretaker" of his own family that being his first obligation and at the

same time attend to his Government duties to maintain his family.”

26. In view of the aforesaid discussion, we are of the conclusion that there is no ground in the appeal to interfere with the judgment. Accordingly, the appeal is dismissed.

**(S.K.GANGELE)**  
**JUDGE**

**(SMT. ANJULI PALO)**  
**JUDGE**

*vidya*