

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

<b>Case No.</b>	<b>FIRST APPEAL NO.1085 OF 2019</b>
<b>Parties Name</b>	Smt. Pushpa Sen vs. Manoj Sen
<b>Date of order/judgment</b>	<b>21/12/2021</b>
<b>Bench Constituted</b>	<b>Division Bench : Justice Sheel Nagu and Justice Purushaindra Kumar Kaurav</b>
<b>Order/judgment passed by</b>	Justice Purushaindra Kumar Kaurav
<b>Whether approved for reporting</b>	Yes
<b>Name of counsel for parties</b>	<b>For Appellant:</b> Shri R.B.Tiwari, Adv. <b>For Respondent:</b> None.
<b>Law laid down</b>	<b>Held :</b> Appellant-wife filed a petition under Section 9 of the Hindu Marriage Act,1955 for restitution of conjugal rights after filing three different proceedings against the respondent-husband and his relatives. It cannot be said that the respondent-husband has withdrawn the company of appellant-wife without any reasonable excuse and, hence, no decree under section 9 of the Act can be granted.
<b>Significant paragraph numbers</b>	<b>para-9</b>

**J U D G M E N T**  
**( 21/12/2021)**

1. This appeal under Section 19 of the Family Courts Act 1984, preferred by the appellant-wife, takes exception to the judgment and decree dated 26.04.2019, passed by the Principal Judge, Family Court, Sehore in RCS No.HM/82/2018, rejecting the petition of the appellant-wife under section 9 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act').

2. Brief facts of the case are that marriage between the parties was solemnized in the month of February, 2013 as per Hindu customs and rituals. The *Gouna* ceremony was also performed after about a year from the date of marriage. It is alleged by the appellant-wife, on account of inadequate dowry, she was being subjected to cruelty by her husband and in-laws, however, she tolerated, for few years. In the year 2017, she was forced to leave the house of her husband and since then she is living in parental house. At the instance of the appellant-wife, three cases were filed against her husband. The first one is a criminal case under section 498-A and 323 of the IPC. Second is a petition under section 12 of the Domestic Violence Act, 2005 and third one is a petition under section 125 of Cr.P.C for grant of maintenance. She remained unsuccessful in all the aforesaid proceedings. However, she filed an appeal before the High Court against the order of acquittal under Section 498-A & 323 of IPC, which is stated to be pending as on date.

3. Learned Family Court, after examining the evidence and material available on record, held that it does not seem to be practicably possible for the parties to live together after so much litigation between them. Hence, it cannot be said that there was no reasonable excuse for the respondent-husband to withdraw from the society to the appellant-wife and, therefore, the decree under section 9 of the Act for restitution of conjugal rights, has been declined.

4. We have heard the learned counsel for appellant-wife. Despite service of notice, no one appeared for respondent-husband. We have carefully perused the record of the Family Court.

5. The appellant-wife appeared as P.W.1 before the Family Court. In para-8 of her cross-examination, she admitted that she is residing with her parents since 17.03.2017. In para-10 of her deposition, she stated that before filing of the petition under section 9 of the Act, she filed three cases against her husband and his family members relating to section 125 Cr.P.C, Section 12 of the Domestic Violence Act and Section 498-A of the IPC. Father of the appellant-wife, namely, Sawai Sen appeared as P.W.2. He in his cross-examination accepted regarding filing of various cases. Another witness, namely, Vikram Singh (P.W.3) who is neighbour of the appellant-wife also accepted the fact with regard to the aforesaid cases.

The respondent-husband himself appeared as D.W.1 and stated that the appellant-wife is residing with her parents as per her own will. She does not want to live with the respondent-husband as she does not feel comfortable in joint family. He also stated that because of filing of various cases it is not possible for him to cohabit with the appellant-wife.

6. Thus, it is to be seen whether on the basis of facts and circumstances of the present case, it can be concluded that the

respondent-husband has withdrawn himself from the society of the appellant with reasonable excuse ?

7. The first part of Section 9 of the Act mandates that when either of the spouse, without reasonable excuse, withdraws from the society of the other, the aggrieved party may apply, by petition to the District court, for restitution of conjugal rights. The second part of section 9 requires that the court should be satisfied with the truth of the statement made in such petition. The third part of Section 9 of the Act is worded negatively which says that if there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.

The explanation to section 9 inserted by the Act 68 of 1976 w.e.f 27.05.1976, explains where a question arises whether there has been reasonable excuse for withdrawal from the society, the burden of proving reasonable excuse shall be on the person who has withdrawn from the society.

8. In the case at hand, the appellant-wife in her petition preferred under section 9 of the Act has pleaded some of the aspects with regard to demand of dowry. In para-5, she has stated that she is ready to cohabit with the respondent-husband. The respondent-husband, in his reply to the petition filed under section 9 of the Act has denied all the allegations and has specifically stated that he is also ready to live with the appellant-

wife. However, on account of unbridgeable differences between them, it is not practically possible to cohabit with the appellant-wife.

9. From the evidence on record, it is evident that there are unbridgeable matrimonial differences between the parties. The appellant-wife filed cases against the respondent-husband and his parents, which further aggravated the situation. Therefore, respondent-husband has withdrawn himself from the society of the appellant-wife. We are of the opinion that now it would be very difficult for him to rejoin the company of appellant-wife. It is seen that the trustfulness of the statement of appellant-wife is not found proved and the respondent-husband has satisfactorily proved that he has reasonable excuse to withdraw from the company of the appellant wife. Hence, we find that there is reasonable excuse on his part to withdraw from the society of the appellant-wife. We also find that the impugned judgment and decree considers all the aspects of the matter which requires no interference in this appeal and, hence, the same is **dismissed**. No order as to costs.

[SHEEL NAGU]  
Judge

[PURUSHAINDRA KUMAR KAURAV]  
Judge

MKL

