

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 27TH DAY OF JANUARY 2006

PRESENT

THE HON'BLE MR.JUSTICE B. PADMARAJ

AND

The HON'BLE MR.JUSTICE S. ABDUL NAZEER

MFA.NO.2042/2001 (FC)

BETWEEN:

Shri.Tulsidas Fakirappa Hubli,
Age: Major, Occ: Agriculture,
R/o Chikkabagewadi,
Tq: Bailhongal,
Dist: Belgaum.

... APPELLANT

(By Sri.Ashok R. Kalyanashetty, adv. for appellant)

AND:

Smt.Shantawwa @ Dyamavva,
W/o Tulsidas Hubli,
Age: 32 years, Occ: Household work,
R/o now at Rukmini Nagar,
Belgaum,
C/o. Smt. Sunanda R. Pattanshetti
At Rukmini Nagar,
Belgaum.

... RESPONDENT

This MFA is filed under Sec.19(1) of the Family Courts Act, praying to set aside the judgment and decree dated 8.3.2001 passed by the learned Judge, Family Court, Belgaum, in M.C.No.21/2000, and etc.


The appeal coming on for orders this day, PADMARAJ J., delivered the following judgment:

JUDGMENT

Heard the arguments of the learned Counsel for the appellant both on merits as well as on I.A.1/2001 and carefully perused the relevant case papers including the impugned order made by the Family Court at Belgaum.

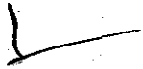
2. The appellant herein who was petitioner before the Family Court at Belgaum filed a petition for restitution of conjugal rights under Sec.9 of the Hindu Marriage Act on the ground that the respondent-wife has withdrawn from his company without any reasonable cause. The respondent wife entered appearance and contested the claim of the appellant by

filing her written statement. It was her contention that she withdrew from the company of the appellant on account of the ill treatment meted out to her while she was living with him and also on the ground that the appellant has taken the second wife. On the basis of the pleadings of the parties the Family Court at Belgaum raised certain points for determination. Both the appellant as well as the respondent adduced evidence in support of their case. It appears that the appellant besides examining himself had examined one witness as PW.2. Likewise, the respondent besides examining herself had examined one witness on her behalf as RW.2. Except the oral evidence the parties did not adduce any documentary evidence before the Family Court at Belgaum. On consideration of the entire material placed on record by both the parties the Family Court at Belgaum has rejected the petition filed by the appellant-husband under Sec.9 of the Hindu Marriage




Act with costs. Aggrieved the appellant husband has filed this appeal. There being a delay of 5 days in filing the appeal the appellant has filed an application I.A.I/2001 under Sec.5 of the Limitation Act to condone the delay.

3. Learned Counsel for the appellant has contended that the Family Court at Belgaum did not approach the case of the parties in a right perspective, in as much as it did not look into the material evidence placed on record, more particularly, by the appellant husband. He also contended that the Family Court at Belgaum was not justified in casting the burden of proving certain facts on the appellant when the same is required to be established by the respondent wife. He contended that the explanation to Sec.9 of the Hindu Marriage Act has not been kept in mind by the Family Court at Belgaum while rejecting the petition filed by the appellant-petitioner.



4. Having heard the submissions of the learned Counsel for the appellant, though we are inclined to condone the delay of 5 days in filing the appeal we find that the appeal is devoid of merits. The Family Court at Belgaum considered the evidence of both the parties in its right perspective and found that the appellant has not been able to establish his claim for restitution of conjugal rights. The Family Court at Belgaum found that the conduct of the appellant-petitioner in approaching the court is itself not bonafide, in as much as, he had approached the Court for restitution of conjugal rights only after the respondent-wife had filed the petition for maintenance. It is not in dispute that the petition for maintenance has been granted and the respondent wife has been awarded maintenance at the rate of Rs.500/- per month. It is pertinent to note that the maintenance to the respondent-wife has been granted on the very same grounds which were taken by



her in the present petition. Admittedly, the appellant herein has not challenged the order of maintenance made in favour of the respondent-wife. Though the order of maintenance passed by the Criminal Court under Sec.125 Cr.P.C.cannot be binding on the Civil Court but at the same time it could be a relevant piece of evidence, more so when the respondent-wife sought for maintenance on the very same ground on which she opposed the claim of the appellant-petitioner. The appellant-petitioner came to the court with an allegation that the respondent-wife left the house after taking away gold and silver articles. The said averments of the appellant-petitioner are found to be false. The material evidence as discussed by the Family Court at Belgaum would clearly reveal that it is the appellant-husband who was totally negligent towards the respondent-wife. The legal burden was upon the appellant to establish by convincing evidence beyond any reasonable doubt that

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the respondent has abandoned him without any reasonable cause. The appellant has failed to establish the same. His intention was only to avoid payment of maintenance to the respondent, whom he had neglected to maintain. The unwillingness on the part of the respondent was quite justified. Her unwillingness to cohabit with the appellant was on the ground of her own safety. When the respondent was being ill-treated at the instance of some other person, there was every justification for her to live away from him. That being so the Family Court at Beigaum was justified in rejecting the claim of the appellant-husband for restitution of conjugal rights. We have carefully perused the reasonings of the trial court and we find that they are supported by the evidence on record. We do not find any such infirmity in the impugned order of the court below so as to call for interference in the



appeal by this court. Hence, we find no merit in this appeal filed by the appellant.

5. In the result, the appeal filed by the appellant stands dismissed. In view of the fact that the appeal filed by the appellant itself has been dismissed on merits without the same being admitted, I.A.I/2001 will not survive for consideration and the same is accordingly dismissed.

Sd/-
Judge

Sd/-
Judge

Sub/