

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.242 OF 2014**

Shri Anant X. Mandrencar,
s/o. Xanum Mandrencar,
46 years of age, married,
Business, resident of 6-4,
Calangute, Khobra Wado,
Bardez-Goa.

.... Petitioner

V/s

Smt. Santoshi Anant Mandrencar
D/o. Namdeva S. Kalojee,
Major of age, married, resident of
House No.270, Chon Wado,
Dhargal, Pernem Taluka, Goa.

.... Respondent

Mr. Joaquim Godinho, Advocate for the Petitioner.
Ms. Pritam Gaude, Advocate for the Respondent.

CORAM : F.M. REIS, J.

DATE : 17th JULY, 2015

ORAL JUDGMENT :

Heard Mr. J. Godinho, learned Counsel appearing for the petitioner and Ms. Pritam Gaude, learned Counsel appearing for the respondent.

2. Rule. Heard forthwith with the consent of the learned Counsel.
Learned Counsel appearing for the respondent waives service.

3. The above petition takes exception to an order dated 3/02/2014, whereby an application for amendment filed by the petitioner came to be dismissed.

4. Mr. J. Godinho, learned Counsel appearing for the petitioner submits that the petitioner desires to introduce an additional ground in the Matrimonial Petition filed by the petitioner for divorce. Mr. Godinho, the learned Counsel further submits that the original ground was on account of cruelty and the additional ground sought to be incorporated is on the ground of desertion. The learned Counsel further submits that the issues have not been framed and the learned Judge was not justified to pass the impugned order and dismiss the application for amendment.

5. On the other hand, Ms. P. Gaude, learned Counsel appearing for the respondent has supported the impugned order. The learned Counsel further points out that an entirely new case has been put up by the proposed amendment. The learned Counsel further points out that the averments in the proposed amendment are not found in the original Matrimonial Petition filed by the petitioner. The learned Counsel further submits that the petitioner cannot be permitted to

change the original stand inconsistent with the original pleadings and, as such, the learned Judge was justified to pass the impugned order. The learned Counsel in support of her submission has relied upon the judgment of the Apex Court reported in **1976 (4) SCC 320** in the case of ***Modi Spinning and Weaving Mills Company Limited V/s. Ladha Ram and Company***.

6. I have considered the submission of the learned Counsel. I have also gone through the records. The petition filed by the petitioner is for divorce. The grounds were under Article 4(4) and Article 4(5) of the Law of Divorce. By the proposed amendment the petitioner desires to introduce particulars of such grounds for divorce. In such circumstances, the contention of the learned Counsel appearing for the respondent that entirely new case is being put up by the petitioner cannot be accepted. The petition continues to be substantially the same for the relief of divorce and merely adding additional facts would by itself not be a ground to refuse the petitioner leave to amend the Matrimonial Petition. In such circumstances, I find that the learned Judge was not justified to pass the impugned order and refuse leave to amend the petition. Admittedly, the application was filed much before the issues were

framed and, consequently, the learned Judge erroneously refused leave to the petitioner to amend the Matrimonial Petition though the additional pleadings flow from the original claim put forward by the petitioner. The proposed amendment, as such, is necessary to effectually decide the dispute between the parties. No prejudice shall occasion to the respondent as she can file an additional written statement and dispute the contentions therein. In such circumstances, the learned Judge has erroneously exercised jurisdiction whilst passing the impugned order which calls for interference by this Court under Article 227 of the Constitution of India. Needless to say, such leave is to be granted subject to paying costs which are quantified at Rs.5,000/- to be paid to the respondent.

7. In view of the above, I pass the following order:

O R D E R

- (i) The impugned order dated 3/02/2014 is quashed and set aside.
- (ii) The petitioner is permitted to amend the Matrimonial Petition in terms of application dated 30/09/2013 subject to payment of costs of Rs.5,000/- as condition precedent. Needless to say respondent is entitled to file an additional written statement to the amended Matrimonial Petition.

(iii) Rule is made absolute in the above terms.

F.M. REIS, J.

NH/-