

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL WRIT PETITION NO. 10642 OF 2014

Sharmila @ Sharayu Vijaykumar Pawar	...Petitioner
Versus	
Vijaykumar Bhagwat Pawar	...Respondent

Mr. Bhushan A. Walimbe i/b Mr. Priyal G. Sarda for the Petitioner

Mr. Prasad S. Kulkarni for the Respondent

CORAM : REVATI MOHITE DERE, J.

MONDAY, 23RD FEBRUARY, 2015

P.C. :

1. Rule. Rule made returnable forthwith with the consent of the parties and taken up for hearing and final disposal.

2. By this petition, the petitioner-wife has impugned the order dated 14th October, 2014 passed by the learned Principal Judge, Family Court, Solapur, below Exhibit 62 in Petition No. A-554 of 2012, by which her application seeking amendment of her counter claim came to be dismissed with cost of Rs. 1,000/-.

3. Few facts are as under :

The respondent-husband filed a marriage petition bearing HMP No. 254 of 2008 in the Court of the learned Civil Judge, Senior Division, Solapur, for divorce. After formation of the Family Court at Solapur, the matter was transferred to the Family Court and the said petition came to be renumbered as A. No. 554 of 2012. The petitioner-wife herein filed her say-cum-counter claim below Exhibit 15 and sought a declaration of judicial separation from the respondent herein. Thereafter, the respondent filed a say to the counter claim of the present petitioner and in November, 2013 the respondent filed his affidavit of evidence in his petition. The petitioner's advocate cross-examined the respondent. Thereafter, the petitioner filed a number of documents vide Exhibit 56 which came to be allowed by the Family Court.

4. On 18th September, 2014, the petitioner preferred an application, below Exhibit 61 and sought time to file an amendment application, seeking necessary amendment to the counter claim and to bring on record certain facts that had transpired during the pendency of the

petition i.e. (HMP No. 254/2008 renumbered as A. No. 554 of 2012). The said application was allowed by the learned Judge, Family Court, with cost.

5. On 25th September, 2014, the petitioner filed an application being Exhibit 62, seeking amendment in the say-cum-counter claim filed by her. It was contended that the said amendment was necessary for the just decision of the case. The respondent resisted the said application. The learned Judge, Family Court vide order dated 14th October, 2014 dismissed the said application being Exhibit 62. Hence, this petition.

6. Mr. Bhushan Walimbe, learned Counsel for the applicant contended that the amendment which was sought was germane and necessary for the just decision of the case. He submitted that the foundation for the said amendment which was sought, was laid, both, in the written say cum counter claim. He submitted that the amendment which was sought, did not give rise to a new cause of action. According to him, after the pendency of the petition, certain subsequent developments had come to light, which were required to be brought on record and for which, the petitioner had already laid the foundation.

7. On the other hand, Mr. Prasad Kulkarni, learned Counsel for the respondent opposed the petition and prayed that no interference is warranted in the impugned order. He submitted that the application was filed belatedly and as the petitioner was not diligent, no indulgence whatsoever was warranted in the impugned order. He submitted that the factum of the second and the third wife allegedly of the respondent was not relevant and germane to the case.

8. Heard the rival submissions. Perused the impugned order; the petition filed by the respondent seeking divorce; the say-cum-counter claim of the petitioner filed in the HMP petition. In the say-cum-counter claim, which is Exhibit 15 filed by the petitioner in the HMP petition, in para 3 at pages 39 and 53 of the petition, it is averred that the respondent's second wife Vaishali had died an unnatural death. Similarly, on page 53, para 10, there is a reference to the second marriage by the respondent. Similarly, in para 11 on page 54, it is specifically averred by the petitioner that whatever allegations that have been made by her, would be supported by evidence. It appears that the applicant has obtained documents and material qua the

respondent after filing of the HMP petition and after filing of her say-cum-counter claim in the said HMP petition. In the amendment application, the amendment which is sought, is to place on record the details of the respondent's second marriage and her unnatural death and also about the third marriage of the respondent. It is categorically averred that the said information was received by the applicant subsequently and that the foundation for the same was already laid down by the applicant in her say-cum-counter claim. The said amendment as is sought, cannot, by any stretch of imagination, said to be an afterthought or sought with the intent to protract the case, nor, can it be said that the proposed amendment, in any way, alters or substitutes a new cause of action.

9. It is pertinent to note, that under Order VII Rule 17, the guiding principle of amendment is, generally speaking, that all amendments ought to be made and presented “for the purpose of determining the real question of controversy between the parties to any proceedings”. The power to allow amendment is wide and Court should not adopt a hyper technical approach. The general view with regard to permitting an amendment is that the party should not be allowed to set-up a new case or a new cause of

action. Technicalities of law should not be permitted to hamper administration of justice between the parties and the object of permitting an amendment in pleadings is to avoid multiplicity of litigation. Courts do not go into the truth or falsity of the amendment sought at the time of considering the application for amendment. The object of allowing an amendment, is to determine the real controversy in the suit, provided the proposed amendment does not alter or substitute a new cause of action on the basis of which the original *lis* was raised or defense taken. Mere delay is no ground for rejecting an amendment. However, an application for amendment can be rejected if an amendment application suffers from lack of bona fides and smacks of mala fides, for protracting the trial. In the present case, the foundation was already laid by the petitioner in her say-cum-counter claim and therefore, it cannot be said that a new case was being raised by the petitioner.

10. In the facts of the present case, it is necessary in the interest of justice, in order to secure the ends of justice, to allow the petition. If the application is allowed, no prejudice would be caused to the respondent as he would have an opportunity to cross-examine the petitioner.

11. In the premise, Rule is made absolute. The impugned order dated 14th October, 2014 passed by the learned Principal Judge, Family Court, Solapur, below Exhibit 62 in Petition No. A-554 of 2012, is quashed and set-aside. The amendment application being Exhibit 62 is allowed. However, the cost of Rs. 1,000/- which was imposed while dismissing the application, is maintained. The same shall be paid to the respondent within two weeks from today, if already not paid. Since the marriage petition pertains to the year 2008, the hearing of the petition is expedited. The trial Court shall make an endeavour to decide the case, preferably within six months from the date of receipt of the order.

12. Parties to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.