

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.327 OF 2014
IN
H.M. PETITION NO.32 OF 2007

Dr. Yashwant Nivrutti Thombare.] ... Applicant

Versus

Dr. Archana Yashwant Thombare.] ... Respondent

Mr. B. V. Holambe-Patil for Applicant.
Mr. Girish M. Joshi for Respondent.

CORAM :- M. S. SONAK, J.
DATE :- MARCH 25, 2015

P. C. :-

1. This petition question Order dated 03/03/2014 made by the Civil Judge, Senior Division, Panvel, allowing application seeking leave to amend made by the Respondent to her plaint.

2. In the present case, the learned Counsel for the Applicant submitted that Affidavit-in-evidence had already been filed. However, the same was permitted to be withdrawn. On this basis, the learned Counsel for Applicant submits that the trial should be deemed to have been commenced and in terms of the proviso to Order 6 Rule 17 of the

CPC, the amendment ought not to have been allowed. In any case, the learned Counsel for Applicant submits that the suit, as originally filed, was for the purpose of divorce. The proposed amendment makes claim in respect of immovable and movable property. In such circumstances, the proposed amendment is not necessary and in any case, the same, if allowed, would change the nature of the suit. For all these reasons, the learned Counsel for the Applicant submitted that the impugned order is required to be interfered with.

3. Having perused the impugned order and material on record, in my judgment, there is no necessity to interfere with the impugned order. The impugned order is neither vitiated by any jurisdictional error nor by any perversity in the matter of approach.

4. Admittedly, as of date, the Affidavit-in-evidence is yet to be filed by and on behalf of the Respondent. Accordingly, it cannot be said that the trial in the present case has already commenced. That apart, the suit as originally filed, seeks divorce and the prayer clause also states that a separate application has been made in the matter of maintenance. If the text of the proposed amendment is perused, all that the Respondent seeks, is share in the alleged matrimonial home as also possession in respect of certain premises, to which she claims entitlement in the context of the marriage with the Applicant. Such amendment, if allowed, will not change the nature of the suit. In fact, such amendment, if allowed, will prevent multiplicity of proceedings.

5. For the aforesaid reasons, there is no reason to interfere with the impugned order. Civil Revision Application is dismissed. There shall be no order as to costs.

6. Consequent to the amendment application being allowed, undoubtedly, the Applicant shall be entitled to file additional Written Statement within the period to be fixed by the learned Civil Judge.

(M. S. SONAK, J.)