

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5472 OF 2014**

Harjeet Singh Sehgal	Vs	Petitioner
Anju Harjeet Sehgal		.. Respondent

Mr. Vikram Deshmukh i/b ANB Legal, Advocate for Petitioner.

Mr. Ashok D. Shetty a/w Rita Joshi and Swapnil P. Kamble,
Advocate for the Respondent.

CORAM : R.G.KETKAR,J.
DATE : 02/03/2015

PC:

1. Heard Mr. Vikram Deshmukh, learned counsel for the petitioner and Mr. Ashok Shetty, learned counsel for the respondent at length.
2. Rule. Mr. Shetty waives service for the respondent. At the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.
3. By this Petition under Article 227 of the Constitution of India, the petitioner-husband has challenged the Judgment and order dated 16.4.2014 passed by the learned Judge, Family Court No.6, Mumbai, below Exhibit-26 in Petition No. A-2020 of 2011. By that order, the Family Court dismissed the application made by the petitioner under Order VI, Rule 17 of the Code of Civil Procedure, 1908 (for short, "C.P.C.") for amendment of his petition with costs of Rs.2000/-.

4. In support of this petition, Mr Deshmukh submitted that the petitioner has instituted petition for divorce on the ground of cruelty under section 13(1)(ia) of the Hindu Marriage Act, 1955 (for short, "Act"). The respondent has instituted Petition No. A-1378 of 2013 for restitution of conjugal rights under section 9 thereof. During the pendency of his petition, he took out Application - Exh.26 under Order VI, Rule 17 for bringing on record specific instances of cruelty, as more particularly set out in the Schedule of Amendment. He submitted that the petitioner and the respondent have not yet filed affidavit of evidence. In other words, he submitted that the trial is yet to commence and, therefore, proviso to Order VI, Rule 17 will not be applicable. He submitted that the Family Court, however, proceeded on the ground that the trial has commenced and consequently proviso to Order VI, Rule 17 is attracted. He submitted that factually the Family Court committed serious error in proceeding on that premise.

5. On the other hand, Mr. Shetty supported the impugned order. He submitted that the petitioner is literate and qualified. The present application is taken out after commencement of the trial, in the sense, that Issues were already framed. He further submitted that the proposed amendment changes the nature of the proceedings. He also made strong grievance about assertions made in the petition and submitted that the said grounds were

not raised either in the main proceeding or in the amendment application. The application for amendment is also filed belatedly and by the proposed amendment the petitioner wants to bring instances on record which allegedly took place 15 years back. He, therefore, submitted that no case is made out for interfering with the impugned order.

6. I have considered the rival submissions made by the learned counsel appearing for the parties. I have also perused the material on record. In paragraph 9, the Family Court recorded that the petitioner was supposed to make reasonable grounds for seeking amendment as the trial had begun. In paragraphs 10 and 11 the Family Court proceeded to hold that since the trial has begun, the petitioner has to make out the case as contemplated by the proviso to Order VI, Rule 17 and since that case is not made out the petitioner is not entitled to amend the petition.

7. It is evident from record and the said fact is not disputed that neither the petitioner nor the respondent has filed affidavit of evidence. In view thereof, it cannot be said that the trial has commenced. If that be so, proviso to Order VI, Rule 17 will not be applicable and the party will be governed by the first part of Order VI, Rule 17. Order VI, Rule 17 reads as under :

“17. Amendment of pleadings- The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions

in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

Once the proviso is not attracted, the Court has power, at any stage of the proceedings, to allow either party to alter or amend his pleadings and the amendment can be allowed which are necessary for the purpose of determining the real questions in controversy between the parties. Mr Shetty submitted that the proposed amendment changes the nature of the proceedings. It is not possible to accept this submission as the petitioner has prayed for divorce on the ground of cruelty and by the proposed amendment he wishes to bring on record specific instances of cruelty. It, therefore, cannot be said that the proposed amendment changes the nature of proceedings between the parties. The proceedings continue to be for divorce under Section 13(1)(ia) of the Act. As proviso to Order VI, Rule 17 is not applicable, the Court has power to allow either party to alter or amend his pleadings at any stage of the proceedings for the purpose of determining the real questions in controversy between the parties. In my opinion, the proposed amendment is necessary for determining the real questions in controversy between the parties. In view thereof, it has to be held that the

Family Court committed error in dismissing the application. Hence, the petition succeeds. The impugned order is quashed and set aside. The Application Exhibit-26 stands allowed. The petitioner shall carry out amendment within 14 days from today and shall serve amended petition on other side. After the amended petition is served on other side, the respondent is at liberty to file additional Written Statement to the amended petition.

8. It is made clear that I have not examined the assertions made in this Petition. All contentions of the parties on merits are expressly kept open. Rule is made absolute in the aforesaid terms with no order as to costs.

(R.G.KETKAR, J.)