

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10191 OF 2015

Mrs. Maheshwari Sundar Raj .. Petitioner
VS.
Sundar Raj S/o. Sundardas & Anr. .. Respondents

Ms Harjeet Kaur B. Singh for Petitioner.
Mr. P. G. Karande i/b. Ms Jyoti J. for Respondents.

CORAM : M. S. SONAK, J.
DATE: 20 NOVEMBER 2015

P.C. :-

1] Rule. Rule is made returnable forthwith with the consent of the learned counsel for the parties.

2] The challenge in this petition is to the order dated 30 July 2015, by which, the Family Court has declined to frame issue in respect of maintenance and return of ornaments. The refusal is on the basis that the Petitioner has not specifically raised any counter claim and consequently, the Respondent has had no occasion to respond to the same. The Family Court reasons out that in absence of assertions and consequent denials, there is no question of framing of any issue as proposed.

3] Although it is true that there is no formal prayer in the written statement claiming for return of gold ornaments and maintenance as and by way of counter claim, if the written statement is perused, there are categoric assertions along with details with regard to the gold ornaments allegedly in possession of the Respondent. Further in paragraph 41 of the written statement, the Petitioner has prayed that the Respondent be directed to return the ornaments so specified and further the Respondent be directed to pay certain amounts, *inter alia* towards maintenance. Considering these averments, leave is granted to the Petitioner to formally incorporate prayers in the written statement, as and by way of counter claim. The amendment to be carried out within a period of two weeks from today.

4] The Respondent is granted liberty to file written statement to the counter claim within a period of four weeks thereafter. In case, the Respondent denies the averments / assertions in the written statement / counter claim, obviously, issues as proposed by the Petitioner will arise. Mr. Karande, the learned counsel for the Respondent submits that he has instructions to deny the assertions in the written statement as well as liability to return the so-called gold ornaments or pay maintenance or other amounts to the Petitioner. In this view of the matter, once, the written statement is

filed by the Respondent herein to the counter claim of the Petitioner, the Family Court is directed to frame the issues as proposed by the Petitioner herein or such and further issues as may arise in the matter.

5] In view of the aforesaid, the impugned order dated 30 July 2015 is set aside. Rule is made absolute to the aforesaid extent.

6] All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)

Chandka