

and then the said order was challenged by the Petitioner-wife before this Court in Family Court Appeal No. 218 of 2014. The said order was set aside and the Appeal was allowed and matter was remanded. Thereafter, the Petitioner-wife filed her reply. Then the Respondent-husband has filed his affidavit-in-chief. The Petitioner-wife then filed her written statement and thereafter the affidavit-in-chief was filed. The application for amendment of the Petition is filed by the Respondent-husband. The Respondent-husband states that the possession of the flat where the Petitioner-wife is staying i.e. Flat No. 1, Pragati Apartment, 411/A, Kasba Peth, Pune is to be handed over by the Petitioner-wife to the Respondent-husband. Therefore, *inter alia* the Respondent-husband wants to add the prayer accordingly in the prayer clause. It was opposed by the Petitioner-wife on the ground that this amendment is not tenable and it is sought at very late stage. The learned Judge has allowed the amendment.

4. The learned counsel Mr. Arjunwadkar for the Petitioner-husband has submitted that when this amendment is allowed then the subject matter of the Petitioner-wife is going to change and now it will become a property suit. He further submitted that the nature of

the proceeding will also change. The Respondent-husband ought to have file a separate proceeding in respect of possession of the said flat and could not have mention this in the Petition. He further relied on the proviso Order 6 Rule 17 of Code of Civil Procedure. He submitted that the Respondent-husband has not showed any due diligence of not mentioning the same in the main Petition. He submitted that the said order of the learned Judge of the Family Court is to be set aside.

5. The learned counsel for the Respondent-husband opposed the application and he supported the order passed by the learned Judge of the Family Court, Pune.

6. Perused the original Petition for divorce filed by the Respondent-husband especially the averments made in para 4 of the said Petition. It shows that the Respondent-husband has stated about the purchase of a Flat and the contribution made by him for the purchase of the said flat. Thus there are specific pleadings in support of his right in the said flat. The amendment sought by him appears to be consequential to the pleadings and it is not very lengthy. Thus, the Respondent-husband has not made out any new case. He has filed this

amendment application immediately after filing of his affidavit-in-chief. The Petitioner-wife will get an opportunity to cross examine the Respondent-husband and no prejudice will cause to her. The learned Judge of the Family Court has specifically mentioned in his order that to avoid multiplicity of the proceeding, the application is filed. Moreover, this being a Marriage Petition for divorce filed under Section 7 of the Family Court Act and considering the view taken by the Family Court that the said issue in respect of the property rights of the parties can be raised in the Petition, I do not find any illegality in the order passed by the learned Judge of the Family Court No. 1, Pune dated 19th November, 2014. Therefore, no interference is required.

7. Hence, the Petition stands dismissed.

8. The learned counsel for the Petitioner-wife has requested for time to file written submission. The Petitioner-wife to file written submission till 3rd September, 2015.

9. The parties to act on the authenticated copy of this order.

(MRS.MRIDULA BHATKAR, J.)