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| Zilu @ Suryakant Vithu Kharat Vs. | ... | Petitioner  |
| Jayashree Zilu Kharat and another | ... | Respondents |

**CORAM : R. G. KETKAR, J.**  
**DATE : 28<sup>TH</sup> JULY, 2015**

Not on Board. At the request of Mr. Joshi, taken up in the production Board.

2. Heard Mr. Joshi, learned Counsel for petitioner and Mr. Patel, learned Counsel for respondent No.1. On the oral application made by Mr. Joshi, respondent No.2 is deleted as no relief is claimed against it. Rule. Mr. Patel waives service for respondent No.1. 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, petitioner-husband has challenged the judgment and order dated 17.10.2014 passed by the learned Civil Judge, Senior Division, Sindhudurg-Oros below exhibit-14 in Marriage Petition No.87 of 2012. By that order, the learned trial Judge rejected the application made by the petitioner for conducting D.N.A. Test of the son of the respondent named as Prashant in order to ascertain his paternity.

4. In support of this Petition, Mr. Joshi submitted that the marriage between the petitioner and respondent No.1 was solemnized on 23.05.1998. Son Prashant was born on 23.09.2000. While rejecting the

application, the learned trial Judge has observed in paragraph 6 that as per the allegations of the petitioner, respondent No.1 was pregnant at the time of solemnization of marriage. In paragraph 9, the learned trial Judge observed that Section 13(1)(i) of the Hindu Marriage Act, 1955 prescribes the ground of adultery for the dissolution of marriage. However, the adultery is restricted if the solemnization of the marriage and not prior to solemnization of marriage. In other words, the learned trial Judge held that as respondent No.1 was pregnant at the time of solemnization of marriage, the alleged adultery was prior to the solemnization of marriage and not after solemnization of marriage. Mr. Patel was not in a position to support the findings recorded in paragraphs 6 and 9 of the impugned order. Even otherwise, from the material on record, the findings cannot be sustained.

5. In view thereof, the impugned order cannot be sustained and on this ground alone, it is liable to be set aside. Hence, Petition is disposed of in the following terms:

- (a) Impugned order dated 17.10.2014 is quashed and set aside;
- (b) Exhibit-14 filed in Marriage Petition No.87 of 2012 is restored to the file of the learned trial Judge;
- (c) Rule is made absolute in the aforesaid terms with no order as to costs.

**(R. G. KETKAR, J.)**

*Minal Parab*