

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.4428 OF 2014

Shri Rajesh s/o Hanumanprasad Dube

-vs-

Smt. Padma w/o Rajesh Dube

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri Yogesh Shukla, Advocate for petitioner.

Shri A. R. Wagh, Advocate for respondent.

CORAM : A.S.CHANDURKAR, J.

DATE : MARCH 11, 2015

Challenge in the present Writ Petition is to the order dated 30/01/2014 passed by the learned Judge of the Family Court allowing amendment in the petition filed by the present respondent for divorce.

The petitioner has filed petition for restitution of conjugal rights under the provisions of Section 22 of the Special Marriage Act, 1954 (for short, the Act of 1954) which is pending. The present respondent thereafter filed petition for grant of divorce under the provisions of Hindu Marriage Act, 1955 (for short the Act of 1955). Written statement came to be filed on behalf of the present petitioner raising various pleas including the fact that the marriage has been solemnized under the Act of 1954. The present respondent moved an application to amend the proceedings by pleading that the cause title was required to be amended that would show that the proceedings were under the Act of 1954. Similarly the averments after paragraph 4 were also sought to be incorporated. Said application was opposed on the ground that rights that were accrued in favour of the present

petitioner was sought to be taken away. By the impugned order, aforesaid application for amendment has been allowed.

The learned counsel for the petitioner submitted that the Family Court erred in allowing said application for amendment. It was submitted that nature of the proceedings would change and further the facts that were within the knowledge of the petitioner when the proceedings were filed were sought to be incorporated by way of amendment. Relying upon the decision of learned Single Judge in ***Conception Fernandes & Anr. Vs. Mrs Tasneem Shaikh & Ors. 2014(5) ALL MR 751***, it was submitted that merely because there was a mistake on the part of the advocate, the same would not be a sufficient ground to allow the amendment.

The learned counsel for the respondent supported the impugned order. According to him, reasons were stated in the application itself that the proceedings had been inadvertently filed under the provisions of the Act of 1955 and hence with a view to avoid technicalities, the amendment was sought.

The filing of proceedings by both the parties is not in dispute. It is the case of the petitioner that the marriage was solemnized under the Act of 1954. According to the present respondent, the proceedings came to be inadvertently filed by the counsel under the Act of 1955. Hence the cause title and prayer clause was sought to be corrected by substituting the words relating to “the Hindu Marriage Act” with “the Special Marriage Act”. It is to be noted that the original petitioner has merely filed her affidavit in lieu of evidence. The amendment as sought does not change the nature of the proceedings or the nature of relief sought. The amendment as

permitted is on account of inadvertent error on the part of the counsel which has been accepted by the learned Judge of the Family Court.

The observations as made in the decision relied upon by the learned counsel for the petitioner cannot apply to the facts of the present case inasmuch as in said decision, it was found that despite specific instructions being given, the advocate therein had not incorporated the suggested pleadings. In the present case, the inadvertence is on the part of the advocate and hence rights of the respondent cannot be prejudiced. It is to be noted that it was always open for the respondent to file fresh proceedings seeking very same relief. Moreover, it is open for the present petitioner to raise all possible defenses available in reply to the amendment as sought.

In view of aforesaid, considering the interlocutory nature of the order, I am not inclined to interfere in writ jurisdiction. Writ Petition is therefore dismissed with no order as to costs.

JUDGE