

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 675 OF 2015**

Smt. Sauravi S. Signapurkar, D/o
Madhsudan and Bhagirathi Marakar, Major
of age, Indian National, Married, R/o
Radhika Apartments, Gopal Nagar, Alto
Betim, Porvorim, Bardez-Goa. Petitioner

Versus

Mr. Sandeep Anand Signapurkar, Married,
Major of age, Indian National, R/o B-213-
A, Ramnagar, Betim, Bardez-Goa. Respondent

Mr. Galileo Teles, Advocate for the Petitioner.

Mr. Sudin Usgaonkar, Senior Advocate with Mr. S. Naik,
Advocate for the Respondent.

CORAM:- C. V. BHADANG, J.

RESERVED ON:- 1st APRIL, 2016

PRONOUNCED ON:- 6th APRIL, 2016

ORDER:

By this petition, the petitioner (original respondent) is challenging the order dated 15.04.2015, below application (Exhibit D-24), passed by the learned Senior Civil Judge at Mapusa in Matrimonial Petition No. 28/2014/A. By the impugned order, the application (Exhibit D-24) filed by the

petitioner to discard the affidavit-in-evidence of the respondent (original petitioner), has been rejected.

2. The brief facts are that the marriage between the parties was solemnized and registered before the Civil Registrar of Mapusa on 15.03.2000. The parties have a son by name Sanjeet Signapurkar. According to the respondent-husband, since the marriage, the petitioner has been behaving in a arrogant and whimsical manner and used to pick up quarrels and used to insult the family members. The respondent was initially staying with his parents. The petitioner and the respondent subsequently stayed at different places till December, 2010. Since December, 2010 the parties have been living separately and the respondent is staying with his parents. The respondent has alleged various acts of ill-treatment attributing hostile behaviour to the petitioner and also use of filthy language and also lodging of various complaints against the respondent.

3. In such circumstances, the respondent filed Matrimonial Petition No. 28/2014/A, under sub-clause 5 of Article 4 of Law of Divorce, which is pending before the learned

Civil Judge Senior Division at Mapusa. The respondent is *inter alia* seeking dissolution of marriage, as the parties have abandoned their conjugal domicile for more than three years due to alleged ill-treatment by the petitioner. The respondent is also claiming custody of the child and orders regarding a flat at Porvorim.

4. The petitioner filed her written statement contesting the claim and denying all the adverse allegations made, the charges levelled and the motives imputed. She has made counter allegations about the abuse and quarrels being raised by the respondent as also of ill-treatment.

5. The respondent filed his affidavit in lieu of chief examination, on or about 07.02.2015. It is thereafter that the petitioner filed application (Exhibit D-24) for discarding the affidavit-in-evidence, which is inconsistent with the pleadings in the original petition. The said application was opposed on behalf of the respondent.

6. The learned trial Court by the impugned order has rejected the application. Feeling aggrieved, this petition is filed.

7. I have heard the learned Counsel for the petitioner and the learned Senior Counsel for the respondent. With the assistance of the learned Counsel for the parties, I have perused the petition for dissolution of marriage as also the written statement filed and the affidavit-in-evidence. I have also gone through the impugned order.

8. The learned Counsel for the petitioner has relied upon the decision of this Court in the case of **Mahabanoo Navroz Kotwal Vs. Piloo Fali Bomanji, 2015 (3) ABR 151**, in order to submit that in appropriate case, where the contents of the affidavit-in-evidence, are contrary or are at variance, with the pleadings, the Court can direct striking of such part. The learned Counsel has taken me through the application (Exhibit D-24), which sets out the various paragraphs, which according to the petitioner are at variance with the pleadings. It is submitted that the contents of said paragraph of the affidavit-in-evidence, are not supported by pleadings, in the petition. He submits that the respondent cannot introduce a new case, by way of evidence, which has no base in the pleadings. He submits that the learned trial Court has failed to appreciate this

aspect, in proper perspective.

9. On the contrary, the learned Senior Counsel for the respondent submits that the learned trial Court, has rightly come to the conclusion that affidavit-in-evidence does not contain major variation, but gives specific instances of the ill-treatment. The learned Senior Counsel would submit that part of the affidavit-in-evidence can be said to be explanatory of the pleadings of ill-treatment of which a foundation is already laid in the petition. The learned Senior Counsel would submit that the trial Court was right in holding that the contents of the affidavit-in-evidence are relevant to decide the issue no. 1 and that the respondent has not set up any new case. The learned Counsel has pointed out the provisions of Order VI, Rule 2 of the Civil Procedure Code, in order to submit that the pleadings can contain statement in concise form and not evidence, by which they are to be proved. He thus supports the impugned order.

10. I have given my anxious consideration to the rival circumstances and the submissions made and I have carefully gone through the pleadings in the plaint, the defence set up and the affidavit-in-evidence. A perusal of the divorce petition

would show that it is based on the allegation of ill-treatment allegedly meted out by the petitioner. At this stage, it is not necessary to dwell on the merits of the petition, as the same is pending before the competent Court. A perusal of the divorce petition would show that the respondent pleads that immediately after the marriage in 2000, the petitioner raised quarrels in the family and therefore, the parents of the respondent advised them to stay separate. As a result, the petitioner and the respondent stayed together at different places. Sometime in the year 2008, the respondent purchased a flat at Porvorim, where both the petitioner and the respondent shifted. The respondent finally started residing with his parents from December, 2010. The respondent has also alleged about some incident on 09.06.2003 attributing use of some insulting words by the petitioner and of using the influence of the brother of the petitioner, who is said to be working as a Deputy Collector. The respondent has also pleaded that finally he was convinced that the marriage had irretrievably broken down.

11. The petitioner has set out various paragraphs of the affidavit-in-evidence, which according to her are at variance with the pleadings. I find that in the aforesaid paragraphs, the

respondent has elaborated the pleadings in the petition. It is true that to a marginal extent, say for instance, the contents of paragraph 8 (of the affidavit-in-evidence), a specific incident of the brother of the petitioner visiting the matrimonial house and of giving abuses, is mentioned. However, I find that there are pleadings about the complaint dated 09.06.2003, as also the allegation about the petitioner using the influence of her brother. In paragraph 21 (of the affidavit-in-evidence), the respondent has stated about giving a written undertaking that he would not assault the petitioner in future. In the petition (paragraph 8), the petitioner has stated about the matter regarding the complaint dated 09.06.2003, having ended with some compromise. Thereafter in paragraphs 39 (of the affidavit-in-evidence) the respondent has mentioned about two complaints, one dated 18.11.2010 and the other dated 04.12.2010, being lodged. A perusal of the written statement would show (paragraph 19) that the petitioner also states about a non cognizable case being registered on the basis of the complaint lodged by her. Thus, I find that no exception can be taken to the finding of the learned trial Court that an entire new case is tried to be introduced. I would hasten to add that this Court has not expressed any opinion on the acceptability of the

evidence. It is evident that the petitioner would be entitled to cross examine the respondent on all aspects and all the rival contentions in this regard are left open.

12. This Court in the case of **Mahabanoo Navroz Kotwal** (supra) has *inter alia* held that a part of the affidavit-in-evidence of a witness can be expunged, if it is at variance with pleadings or is not relevant. However, it is clear that this would depend upon the facts and circumstances of each case. In the present case, I do not find that the impugned order needs interference in the exercise of the extra ordinary jurisdiction of this Court. As such, the petition is hereby dismissed.

C.V. BHADANG, J.

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